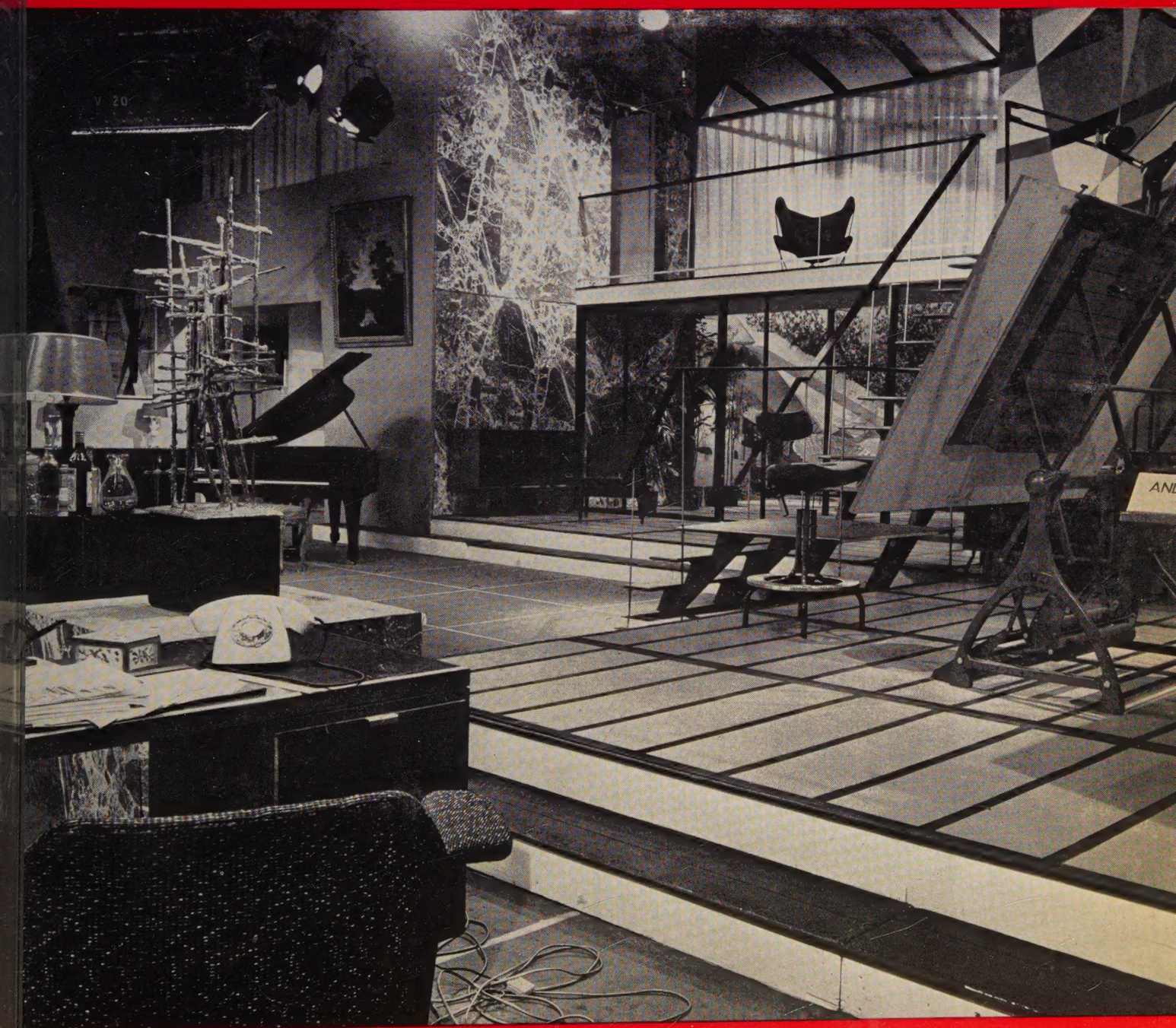


REVIEW

European Broadcasting Union November 1959

sound and television broadcasting news general and legal

58B



special television design number

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EBU REVIEW

PUBLISHED BI-MONTHLY BY THE ADMINISTRATIVE OFFICE OF THE EUROPEAN BROADCASTING UNION

This special number contains the first of a series of articles on production and design in television, which will now be appearing at regular intervals in the *Review*.

Mr. Richard Levin, Head of BBC Television Design, has written this first article for us and we have to thank him and the BBC for his interesting contribution. The ARD is contemplating the next article in the series for one of our forthcoming numbers.

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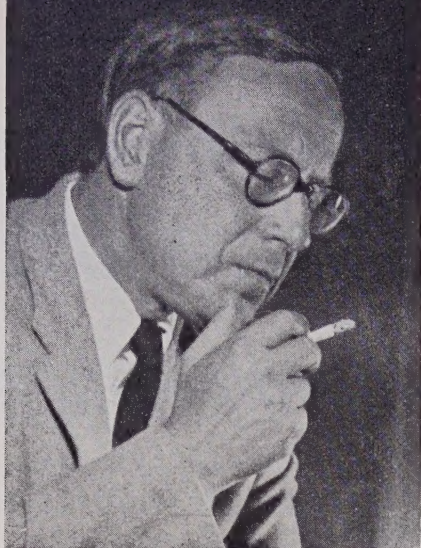
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Editorial and Publishing Office :
1, rue de Varembe, Geneva
Switzerland

Telex : 22 230 Telephone : 33 74 60
Telegrams : Uniradio Geneva
Price : 3 Swiss francs

Editeur responsable: Ch. Gilliéron, 1, rue de Varembe, Geneva, Switzerland

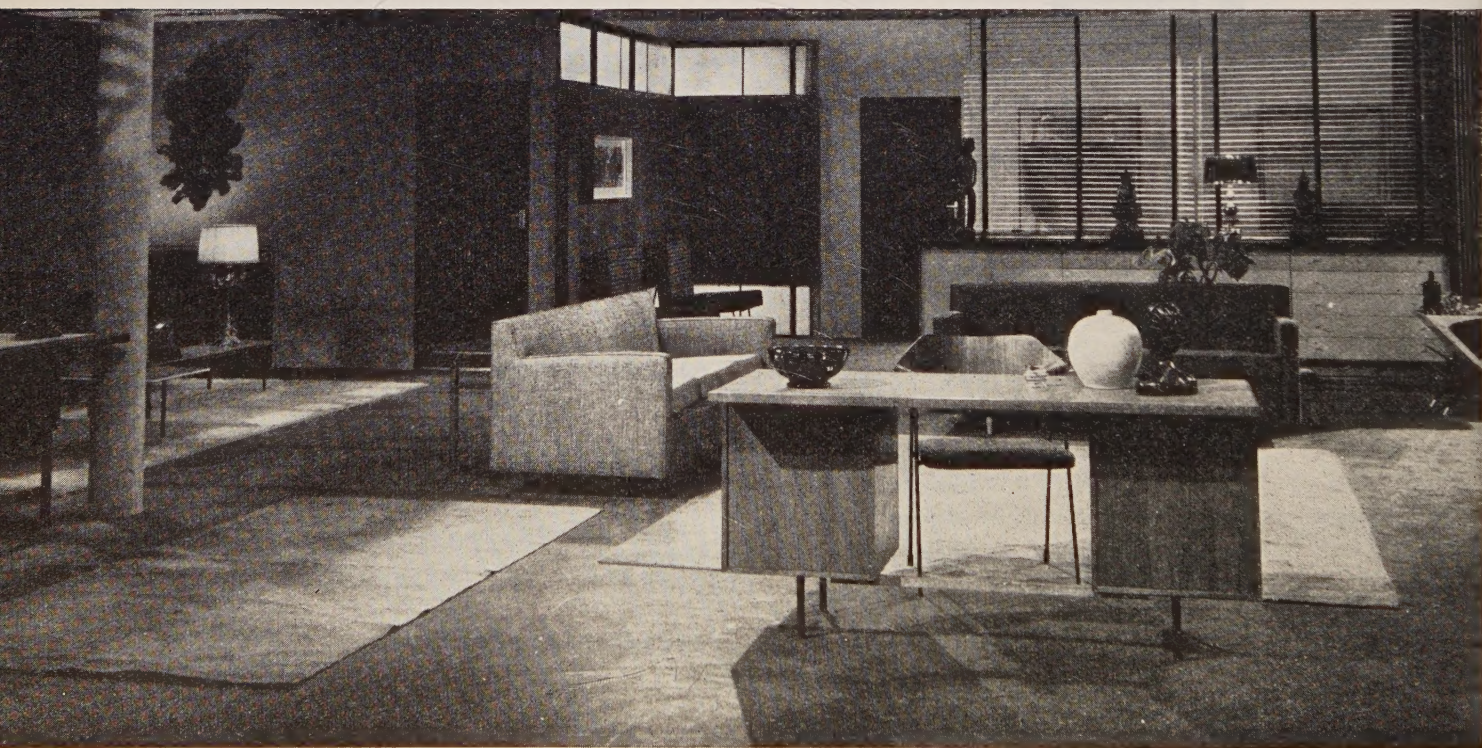


GENERAL SECTION

RICHARD LEVIN, O.B.E., F.S.I.A., Head of BBC Television Design

Television and the Designer

This is the first of a series of articles and reviews covering the problems of scenic and production design. Together with these articles it will be possible to publish for the first time collected examples of television design both from Europe and television stations all over the world. The limited reception range of normal television transmission prevents designers engaged in programmes from seeing directly the work of their colleagues in other countries, and so new thought and ideas in design cannot be interchanged and developed in the ordinary way. It is hoped that the pages of this journal may help to convey new thinking in the approach to design in television.



1. Dramatic Realism

1. "The Cocktail Party" Designer: Stephen Taylor. A set designed to reflect a way of life. In the context of the play, it is in itself a comment on contemporary interior design.

Regular television programmes are now transmitted in thirty-six countries outside the European area. Except for those fortunate designers who have had the opportunity to travel, little has been seen in Europe of the work of designers in other parts of the world. Designers in more remote stations particularly will have had little opportunity to benefit from the experience of others and they will have had to measure up to and resolve the problem of designing for television on their own. Their progress will have been correspondingly slower and more difficult.

Designers in Europe have the advantage of being in close proximity to colleagues in other countries and it is easy for them to visit each other. The results of this are clearly seen in the standards which exist in Europe. Circumstances in the different services vary enormously in size, in facility and in studio turnover time, so care is always needed in relating results as it would be unfair to compare the standards of the production which was built overnight to one in which a degree of perfection had been achieved over four or five days. Comparisons must be made on the broader issue of good design thought in terms of the television camera and of good technical planning in terms of movement. Television as a creative medium will benefit more from good thinking within prescribed circumstances than from the unimaginative use of unlimited areas and facilities.

A collection of photographs of world television design has recently been received by the BBC for inclusion in a book on Television Design which they will be publishing shortly, and some examples are reproduced here.

Many of these show great ingenuity of approach to the artistic and technical problems involved. It is obvious that much creative thought and energy has been displayed and that results are being achieved in the face of many limitations.

On examination, the world "scene" as a whole displays little national characteristic. There is, however, a pronounced individuality and character about the look of the different services. Designers of television have been drawn from many sources—from the film industry, the theatre, architecture and the graphic arts. Each designer inevitably brings experience of one sort or another with him, which colours his approach to television. Television design appears to be developing more in terms of "house-style" than in national terms. The emergence of these styles is wholly attributable to the direction of the teams involved.

Little is known about how design departments have come into being. Perhaps too often they grow and develop within a service just to meet a requirement for scenery—of some sort. In some cases there will have been a managerial decision to employ an Art Director or, if the substance of the service justifies it, to set up a Design Department. It is important that these decisions, which must be managerial, are made with sound and informed advice because from this will grow the style and visual character of the service for many years to come. Design for a television service stems from a team—on the selection, standards and policy of that team will depend the quality of the service as a whole.

Too often scenery for television is thought of only

B.B.C. Television Design

These photographs have been selected from the Design Department's library of set stills. This library has been maintained since the inception of the B.B.C. Television Service in 1936. These photographs now run into many thousands and provide a unique record of the development of visual style and technique in Television production.

The B.B.C. Design Department now employs nearly a hundred creative specialists covering the many aspects of Television output. This team is supported by a comprehensive construction and supply service. The combined efforts of the department are deployed in the presentation of well over two thousand studio programmes a year: this is the greatest output of its kind anywhere in the world.

The photographs which follow have been selected to illustrate the four developed styles of design in everyday use.

in terms of the drama designer. One must agree that this aspect of design involves the largest amount of scenery and costs the most to dress and mount. It is important to remember, however, that this is only a small part of television design output and to have a design department staffed only with drama specialists will leave the majority of programmes uncatered for.

If one examines the types of 'live' programme involving scenery, and breaks them down into percentages, the results will show where there is the greatest recurring use of design. As television output today follows a general pattern, the percentage breakdown as it exists in the United Kingdom may prove a significant indication. The field of design covers talks, drama, variety and music. The percentage output of these groups is as follows:—Talks 55%, Drama 20%, Variety 15%, Music 10%.

The talks group of programmes includes news, discussion, information, instruction, quiz and panel games, audience participation shows—all programmes requiring a specialized design approach, all programmes requiring an apparently uncontrived studio background.

The heading "drama" includes light entertainment of the situation comedy kind which, from the design point of view, belongs to this category.

The "variety" group is composed of programmes involving many different routines and production numbers and calling generally for unrealistic scenery of a stylized or abstract kind.

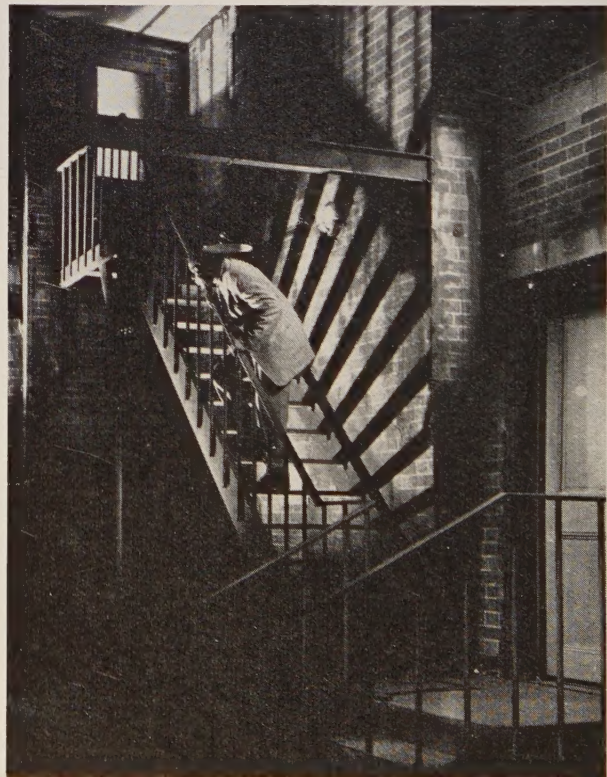
Music programmes embrace ballet, opera, orchestral productions and individual instrumentalists, and vocalists. These programmes, in general, require the same design qualification as "variety", albeit with a different approach.

In the make-up of a design team which will completely meet the needs of all these categories of television programmes, it is obvious that the specialists involved must have talents related to the particular kind of programme concerned, and must not be over-balanced in one way or another. The ratio of design specialists required to service programmes is not, however, related directly to the percentage given above, the reason being that a talks or "studio background" designer can turn out ten programmes to a drama designer's one, and a variety designer will need to work more quickly than the drama designer. The focal point of all design and scenery activity is the designer himself, and the whole future and development of design in television must inevitably depend on his selection and deployment.

Design in television can only be expressed in four ways: as contrived realism, as a studio background, as a stylised design, or as an abstract design. Each form of expression requires a specialised skill and talent, and if one accepts the thesis that it is important to bring to television the right kind of designer to meet these needs, it follows that it is equally important to give him work suitable to his talent when he arrives. In the allocation of programmes to



2. "Escape" Designer: Stewart Marshall. A carefully contrived reproduction of a wartime prison camp, constructed on location and used for a filmed insert.

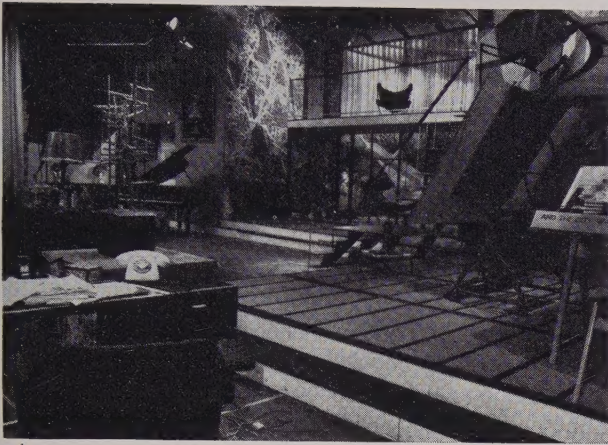


3. "Big Guns" Designer: Richard Wilmot. An example of social realism in design. A drab setting made dramatic by significant lighting and the flexibility of action and camera shot resulting from the use of various levels.

4. "Statue of David" Designer: Eileen Diss. This setting is designed to reflect the central character of the drama—an ego-centric architect of tomorrow—over-lifesize elements of design and pattern are used to build up an atmosphere of impending catastrophe.

5. "Amphytrion 38" Designer: Stephen Taylor. Part of a large composite set designed to provide an area allowing the maximum flexibility of movement. The formal realism of the style is offset by sufficient small detail to add significance to individual camera angles.

6. "When We Are Married" Designer: Fanny Taylor. An excellent example of imaginative set dressing. A well thought out arrangement of items of furniture and bric-a-brac produce—with appropriate lighting—a strong feeling of time, place and atmosphere, an inescapable nostalgia.



designers it is not only important to ensure that they are "right" for the style of work involved but careful thought and consideration must also be given to the designer's temperament and personality vis-à-vis that of the producer. The selection of the designer in relation to the programme as a whole is as important to the final result as the casting of the artistes.

Of the four design approaches to programmes, by sheer weight of use the studio background must be given first consideration. It is the background to all the programmes which come under the generic title of "talks"; it is also the layout and format of television journalism. As in all other forms of scenery, studio background must reflect the character of the programme and must contribute to the meaning of the programme itself. The variety of programme style involved is infinite—from the atmosphere which is relaxed and leisurely, to the one which is urgent and controversial. In the early days of television, this kind of programme was usually presented in front of grey drapes, but today, with the development of production techniques, the "visual aid" of scenic devices of all kinds forms an integral and positive part of these programmes.

The designer of the studio background in television has a special responsibility, as the furnishing and dressing of these programmes will have a profound effect on public taste—an effect created by daily familiarity and the authority of the programmes themselves. As people tend to believe what they read in newspapers, so they tend to

accept as "right" the things which they see on the television screen.

Programmes of the "talks" type require a special "library" of backgrounds. As opposed to doors, fireplaces and windows of stock scenery kept for drama, studio backgrounds should be non-representational and designed to give the maximum flexibility and variety in their use.

Contrived realism is the style of design represented in the bulk of dramatised programmes. There are two reasons for this, one practical and one aesthetic. The practical reason is one of cost. Television scenery for drama is normally run on a repertory basis. Stock pieces of scenery form some 80% of each production; the remaining 20% of new work is devoted to minor additions or modifications necessary for linking or recasting the stock pieces. To increase the amount of new work would make the necessary scenery costs—on a daily basis—prohibitive.

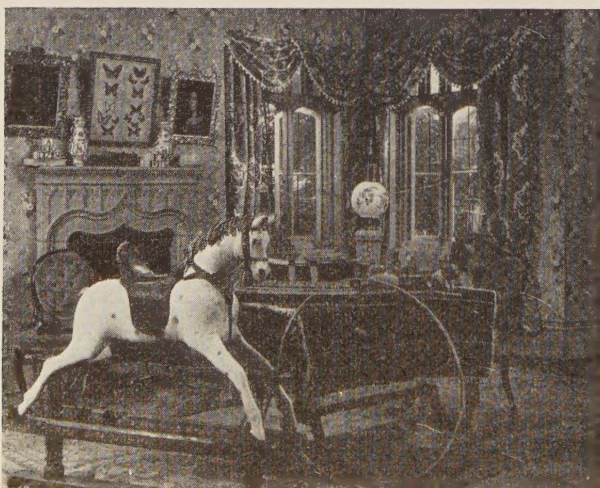
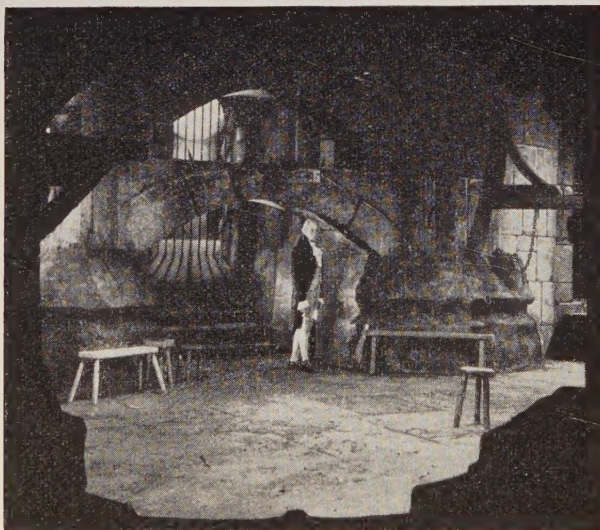
The stock scenery of television is made up of rostra for levels and flattage for wall surfaces; these are the plain areas. Add to this a large library of doors, windows, fireplaces and openings of all sorts, all detailed in specific styles and periods, all highly real; here is the practical reason for the use of realism in drama design. If however circumstances were such that these limitations could be overcome, the designer still has to face the more positive aesthetic objections to any departure from basic realism.

The visual aspects of television have been precondi-

7. "Tale of Two Cities" Designer: Norman James. A filmed insert for the opera based on the Dickens story. For this sequence a permanent outdoor set was adapted by the use of characteristic and suggestive detail to match in with a studio setting.

8. "Tale of Two Cities" Designer: Gordon Roland. The prison scene from a children's serial adapted from Dickens' novel. The use of foreground detail extends the setting towards the camera, lighting and scenic painting combine to suggest dimensions beyond the limits of the screen.

9. "Little Lord Fauntleroy" Designer: Lawrence Broadhouse. A children's serial play in which a familiar atmosphere is evoked by dressings chosen for their emotional effect. The successful realization of design of this sort depends more than anything else on the designer's intimate knowledge and understanding of the script and its period.



tioned by the cinema, which, through the convention of the close-up, is able to bring its audience through the proscenium arch of the live theatre right into the "acting area" and to re-instate the fourth wall. In television actors appear on the screen in close sequence to real people, to the realities of news and events, and in their turn they too wear the mantle of Reality. In the live theatre, actors and scenery are a single image within the proscenium frame; the audience is collective and detached, the conventions and stylisation of acting and scenery are expected and accepted. In television the marriage between scenery which is abstract or in any way removed from reality and the clinical close-up of the performer's realness is virtually impossible. There is no common ground between drama in the theatre and drama in television, either in writing, acting or design.

There is a great deal to be done in the exploration by writers, producers and designers in the areas of television drama which do allow some degree of creative abstraction. Much writing for television which is in itself poetic, in the nature of fantasy or operatic, as often as not depends for its poetry on the very reality of its setting; deviation is possible, but in a limited way. While the medium demands that real people should be set against a background of seemingly real things, it is not always necessary to induce *all* the normal things; a précis of reality or stylisation by omission is an acceptable formula. Walls may disappear leaving the furniture, a whole landscape may vanish leaving a solitary tree, in the last analysis the actor alone in void. Real things may be left out, but it is always real things that must remain.

Creative design for drama can only develop alongside creative writing and sensitive production. Its expression is composite and lies not so much in the intractable elements of scenery (still less in the traps and pitfalls of stylised painting) but in a contribution to significant camera work, picture composition and production.

The design of realistic scenery demands a considerable amount of technical skill and experience. The planning of the studio in relation to camera movement is vital to the fluidity of a production, and the geography of the settings in relation to each other is essential to the proper understanding of the drama by its audience. It goes without saying that the drama designer will have a proper knowledge and sympathy for periods, styles and places, but it is not only in the architecture of a set that the craft of the drama designer is expressed. This is manifest in the selection and arrangement of all the things which make that set "lived in" by its ephemeral occupants. Set dressing at its best demands a high standard in taste and discrimination and a real feeling and understanding for the drama itself.

Stylised and abstract scenery may be considered together, since they both call for a similar creative approach. Stylised design is derived from reality and is

an analytical thought process. Abstract design, on the other hand, is not in any way related to reality and is a synthesis of shapes which in themselves may carry an evocative or symbolic thought or be merely decorative. Stylised design is derived design, abstract design is original design. Both of these styles are the basis of the most original aspects of television design and are the natural forms of expression in the dream worlds of light entertainment and ballet and the evocative world of music. The designers in this field need an entirely different training and background to the designers of contrived realism or studio background. Graphic Art plays a vital part in this form of design and the best results are as often as not achieved by painters and illustrators. This is the field of the artist and the constructivist sculptor.

The problems of this kind of design are immense. Variety programmes are by their very nature "last minute" programmes and the designers and artists working in this field are hard-pressed to meet deadlines and even more hard-pressed to maintain an imaginative flow of different ideas to meet the constantly similar situation of "pop" song and dance routine. The rapacity of the television medium is such that only the emotionally resilient can flourish, yet it is this field which demands the greatest creative turnover, imagination and sensitivity. It is an oddness of circumstance that this kind of television design invites a highly intellectual approach.

Background to action is not the only form of design in television. An important field is developing in graphic work—a field which covers illustration, titling, film animation, programme promotion, maps, charts and visual aid devices of all sorts.

Programme titling is an integral part of the programme itself. The graphic artist needs to reflect the mood and the programme in the same way as the scenery designer. In a sense, the titling of a programme is similar to a bookjacket or the packaging of a product. It must convey the style and quality of the product, it should enhance the product and should sell that product. Layout, typography and illustration play as important a part in titling as they do in advertising and packaging. Television has given the graphic artist the added dimension of movement, the relation of frame to frame to create new visual emotions.

Creative television as a medium of visual expression is obviously growing up. Design has been something of the Cinderella; as creative writing and production follow technological developments, so design follows the developing needs of television writing and production.

Design in its broadest sense is ubiquitous in television. There is an element of design in every picture which is brought to the television screen; from the camera reporting events as they happen to the camera carefully set up in the studio. The design thought in making a picture may be objectively functional in reportage, or aesthetically subjective when expressing the dramatic mood of the

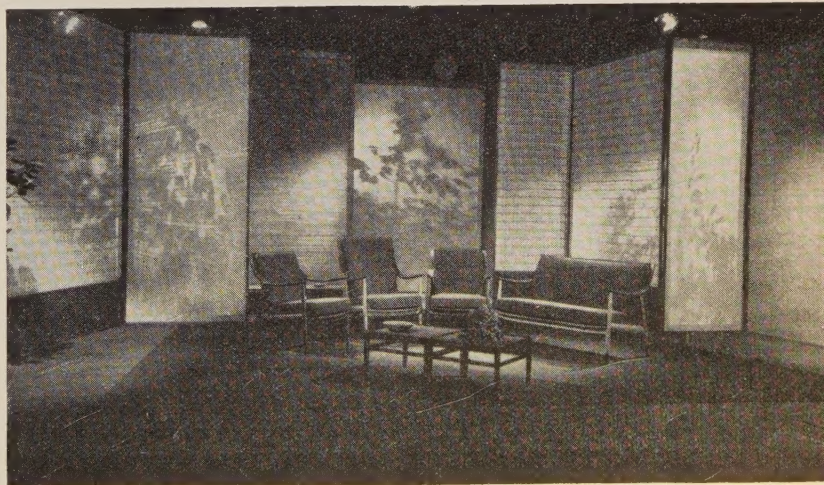
2. Studio Background

10. "Tonight" Designer: Stephen Taylor. A daily programme of topical interest. Here a formal setting reflects current interest without special emphasis—the problem here was to provide a background positive in style yet neutral in effect, essential qualities in a setting which is to be repeated daily. The geometry of the set allows for camera planning with the minimum of rehearsal time.

11. "The Brains Trust" Designer: Natasha Kroll. A weekly discussion programme. Here the need to produce pictures of from one to five people conditions the planning of the set. The background is of an abstract nature related to the composing of pleasant pictures and the philosophical nature of the programme.



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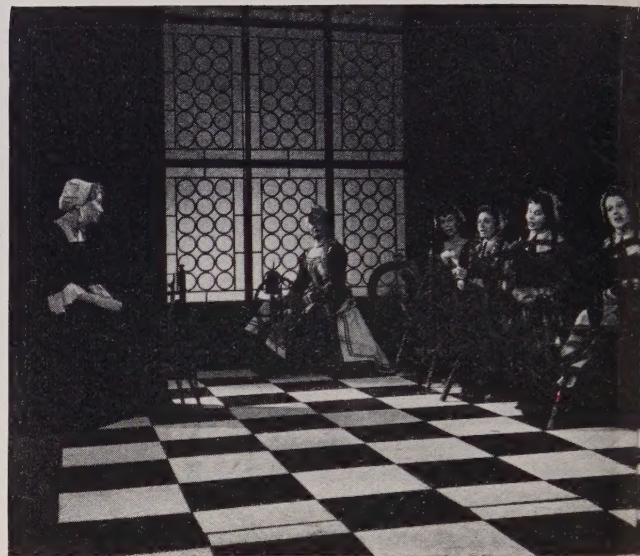
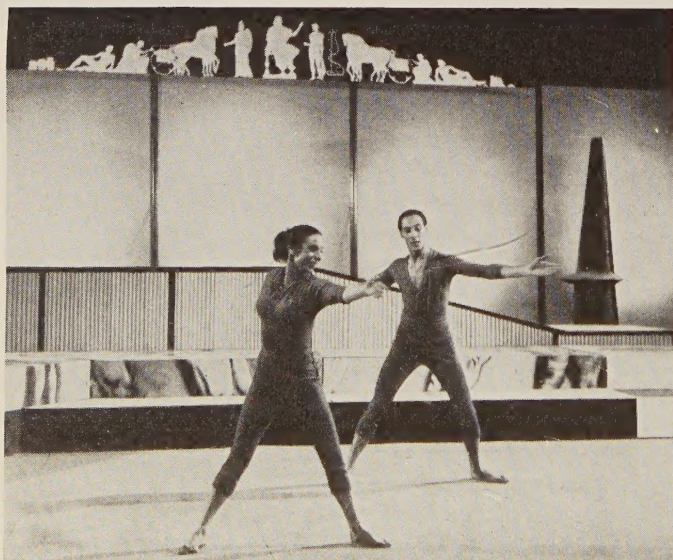
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contrived situation. In whatever form it takes, design is no mute or negative contribution but an integral and creative part of television; an influence which at its best can be decisive.

The manifestation of design comes from many quarters, it is not just the scenery and it is not a "one man job", it derives in varying degrees from the whole production team. The contributions take two forms: the CONCEPT of writer/producer, and the REALISATION in terms of scenery, lighting, costume, make-up, microphone and the camera. The visual pattern of a production is complete when all these circumstances are arranged in relation to each other in such a way that the original concept can be fully realised in practice—and this is achieved, at best, in an atmosphere of sympathetic teamwork and mutual understanding.

Design in television has grown up with the professional development of the medium and today the designer has achieved a position of responsibility and respect. He has a close working relationship with the producer and enjoys a situation in which he can contribute materially and intellectually to programmes.

3. Stylised Design



12



13

12. "Opera Omnibus" Designer: Stephen Taylor. The Spinning Chorus from "The Flying Dutchman", an example of stylization by omission, a style well suited to excerpts of this kind. The costumes, properties and simple scenic elements, set in blackness, not only convey the correct mood and atmosphere, but heighten the significance of the action.

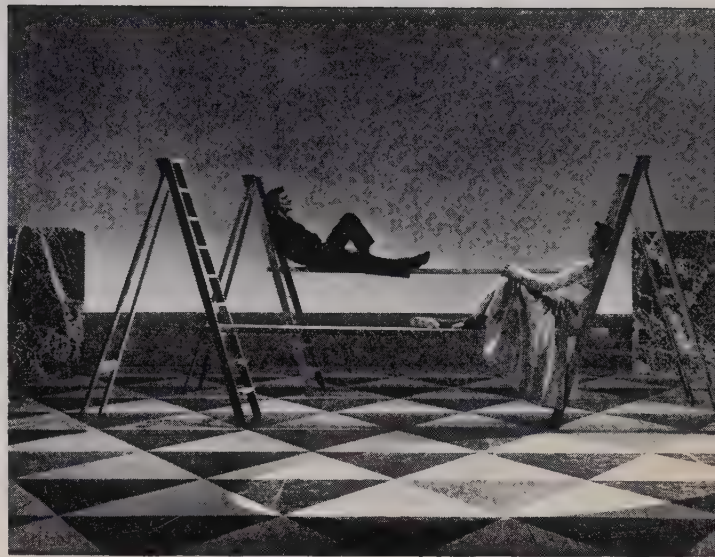
13. "Merely Melville" Designer: Malcolm Goulding. A seaside scene from a Television Revue. The use of graphic design for live action adds theatricality as well as reflections of realism to a farcical situation.

14. "A to Z" Designer: Tony Abbott. A stylized design based on classical forms adapted to reflect the theme of a dance routine.

15. "A to Z" Designer: Tony Abbott. A formal background of decorative motifs and stylized architectural elements.



15



18



16



4. Abstract Design



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17

16. "Hit the Headlines" Designer: Audley Southcott. A shot composed for a band production number. The design element lies in the abstract picture pattern produced by lighting, shapes and artists.

17. "The World Our Stage" Designer: Audley Southcott. A sophisticated approach to a design problem using stylized reproduction in an abstract form. The dancer herself is present in both the performance and in the setting—a fresh and exciting approach.

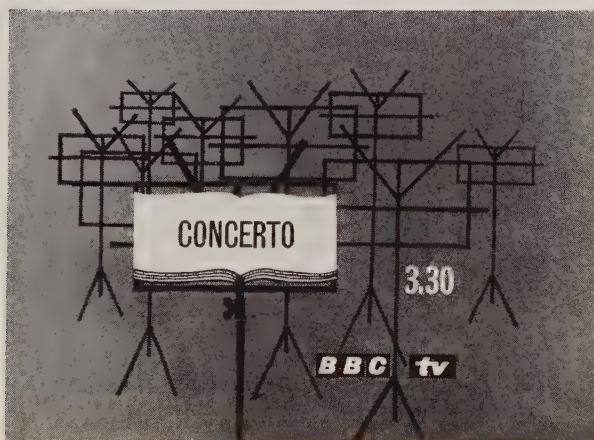
18. "The Saturday Show" Designer: Tony Abbott. An uncomplicated abstraction in which the performers provide virtually their own setting. Television design at its best is characterized by boldness and simplicity.

19. "Fiesta" Designer: Tony Abbott. An abstract background for a popular song. The design is suggested by the lyric and developed into a decorative background. This style is useful in variety shows where one artiste quickly follows another and scenery has to be light, economical and clear in its effect.

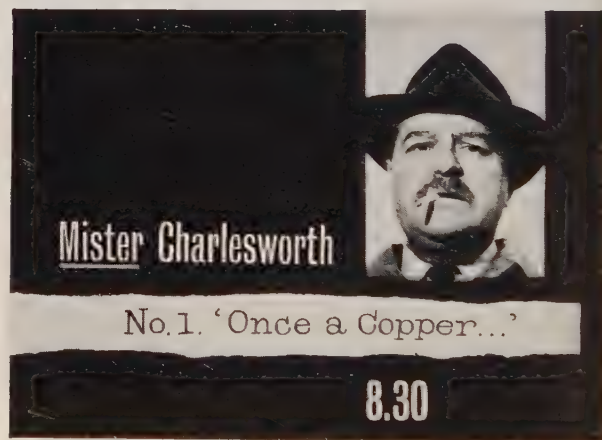


20. "The Ted Heath Orchestra" Designer: George Djurkovic
The orchestral setting is a problem in architecture and sound balance as well as visual design. This abstract arrangement in levels answers many of the picture questions which arise.

BBC Graphic Design



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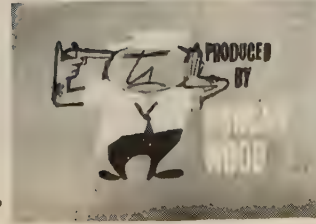
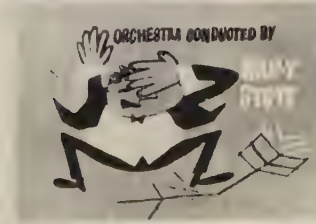
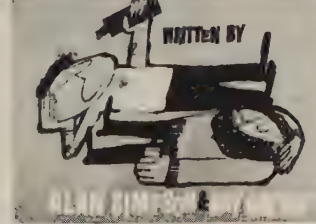
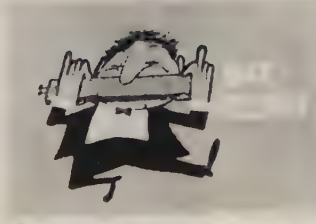
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21. Designer: Geoffrey Brayley.
22. Designer: Don Higgins
23. Designer: Roy Laughton.
24. Designer: Geoffrey Brayley.
25. Designer: Roy Laughton.
26. Designer: Bernard Blatch.
27. Designer: Geoffrey Martin.
28. Designer: Roy Laughton.



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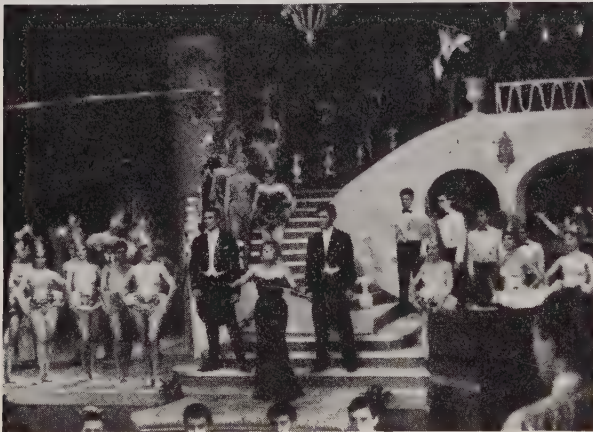
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The International Scene

1. FRANCE R.T.F. Algiers: Discussion Programme.
2. SOUTH AMERICA Buenos Aires, Argentina: Variety: "Grandes Revistas de los Viernes".
3. AUSTRALIA¹ A.B.C.: Variety: "Australian All Star Band". Designer: Philip Hickie.



1



2



3



4

4. BELGIUM I.N.R.: Ballet: From the Theatre Royal de la Monnaie, Brussels.
5. CANADA C.B.C. Toronto: Drama: "Under Milk Wood". Designer: Rudi Dorn.
6. CHINA The People's Republic of China, Peking: Drama.
7. CZECHOSLOVAKIA Prague: Drama: "Raduz a Mahulena". Designer: Ivo Houf.
8. DENMARK Statsradiofonien: Women's Programme: Studio Background for Fashion Show. Designer: Jorn Mathiassen.



5



6



7



8

9. FINLAND Helsinki: Discussion Programme: "Meet the Press." Designer: J. Lindfors.
10. FRANCE R.T.F.: Drama: "Therese Raquin".
11. HAWAII KGMB-TV Honolulu: Variety: Half-hour weekly show of semi-professional talent from the Islands.
12. HOLLAND N.T.S.: Drama: "Rope". Designer: Fokke Duetz.
13. ITALY Rome: Discussion Programme: "Dibattito". Designer: Emilio Voglino.



9

14. JAPAN NHK Tokyo: Discussion Programme: "Crown Prince and Crown Princess as our Classmates".
15. LUXEMBOURG Tele-Luxembourg: Variety Programme. Designer: Jean Paul Conzemius.
16. POLAND Warsaw: Drama: "Apollo of Bellac".



13



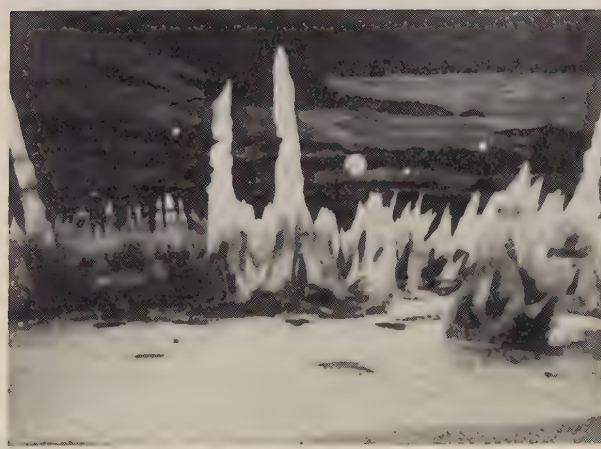
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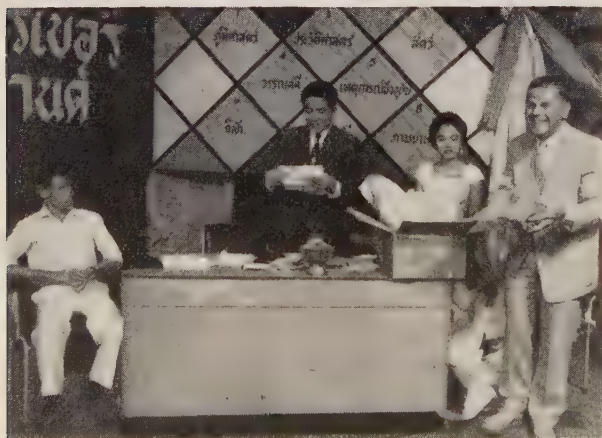
17



18



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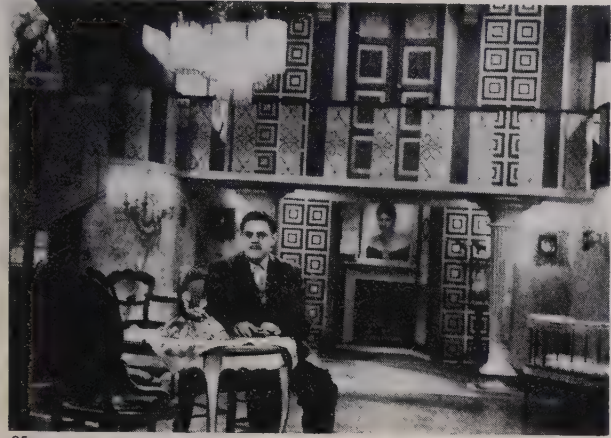
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28



29

17. RUMANIA Bucharest: Drama: "The Forest".
18. SWEDEN Stockholm: Drama: "Lilith".
19. SWITZERLAND Graphic Design: Designer: Werner Gugolz.
20. THAILAND Quiz Programme.
21. SOUTH AMERICA Uruguay: Variety: "Noches Brillantes".
Designer: Arturo Farre.
22. U.S.A. C.B.S. Hollywood: Discussion Programme: "Journey"
Designer: Robert Tyler Lee.
23. U.S.A. N.B.C. Hollywood: Variety: "Dinah Shore Chevy
Show". Designer: Franklin Swig.
24. U.S.S.R. Moscow: Opera: "The Miserly Knight".
25. SOUTH AMERICA Caracas, Venezuela: Drama.
26. W. GERMANY SF Berlin: Drama. Designer: Werner Schöne.
27. W. GERMANY Hamburg: Ballet: "Romeo and Juliet".
Designer: K. H. Joksche.
28. YUGOSLAVIA Belgrade: Variety Programme.
29. YUGOSLAVIA Zagreb: Variety.

The Prix Italia 1959

by **Gianfranco Zafrani**

Secretary-General of the RAI Secretary-General of the Prix Italia

The 11th session of the International Italia Prize for Radio and Television Works was held from 1st to 16th September in Sorrento, on the Bay of Naples.

Founded on the initiative of the RAI in 1948, the Prix Italia now has 23 member organisations, including the original founders (British Broadcasting Corporation, Radiodiffusion-Télévision Française, Société Suisse de Radiodiffusion, Oesterreichischer Rundfunk, Stichting Nederlandse Radio-Unie, Radio Monte Carlo, Emissora Nacional de Radiodifusão of Portugal), joined successively by the Institut National Belge de Radiodiffusion, the Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Republik Deutschland, the Broadcasting Foundation of America, Radio-Télé-Luxembourg, the Canadian Broadcasting Corporation, Radio Eireann, Nippon Hoso Kyokai, Polskie Radio, Sveriges Radio, the Yugoslav Broadcasting Organisation, the Israel Broadcasting Services, the Australian Broadcasting Commission, the South African Broadcasting Corporation, the Institut National de Radiodiffusion Hellénique and the Radiodiffusion Nationale Marocaine.

This group of organisations has created a competition that is unique of its kind. Each year the member organisations are invited to submit their best productions in one or other of the categories specified in the Statutes of the Prix Italia. In sound broadcasting, there are sections for musical works, literary and dramatic works, and documentaries; in television, there has been only one section up to this year, for documentaries of an artistic, literary, scientific, social or topical character. The first important innovation introduced this year by the General Assembly was a modification of the Regulations of the Prix Italia for Television, designed to include musical and dramatic categories, parallel to the Regulations of the Prix Italia for Radio Works which experience has shown to be entirely satisfactory. As from 1960, then, the Prix Italia for Television will be divided each year into two awards of equal value, to be presented alternately to a musical work and a documentary, or to a dramatic work and a documentary. Television services will thus be able to make comparisons of their musical or dramatic works every two years. The General Assembly has

decided to start in 1960 with dramatic works and documentaries.

The Prix Italia is reserved for organisations which have accepted its Statutes and one of its features is therefore that it makes possible the comparison in an annual competition of work produced by the same organisations. These organisations must attempt to select their entries from among works which are better suited to the media of radio and television than to any other. The works must also present high aesthetic qualities and include elements which broaden and enrich broadcasting experience.

As far as sound broadcasting is concerned, the history of the Prix Italia is a long one, demonstrating that the founders' aim to build up a repertoire of radio works of a high standard and outstanding artistic quality has been achieved. In television, this aim will be reinforced by the new Regulations which are designed to extend the scope of the competition to dramatic and musical works. This repertoire is at the disposal of member organisations for their broadcast programmes and, as such, it is a highly significant example of international cooperation on the artistic and intellectual plane. The Prix Italia acts as a stimulus to authors and all who take an interest in sound and television production. Apart from the awards made every year, an opportunity is given for profitable comparisons. At present there are five awards for radio works and three for television, for in addition to the Prix Italia itself, which is subscribed to by member organisations, there are the Radiotelevisione Italiana Prize, the Italian Press Association Prize and the prize offered by the town in which the contest is held. Indeed, it is a feature of the competition never to have its annual session in the same place but to seek variety by choosing places — always in Italy — which by their artistic and historical traditions make appropriate settings for the heights of inspiration to which the Prix Italia aspires.

The results of this year's competition were announced on the evening of 14th September in the course of a ceremony attended by representatives of the member organisations, the Italian authorities concerned with radio and television, and prize-winners from all parts of the world. The following awards were made :

Prix Italia for musical works

A Neurasthenic's Night — music by Nino Rota and text by Riccardo Bacchelli, submitted by the Radiotelevisione Italiana;

Prix Italia for literary and dramatic works

A Beach of Strangers, by John Reeves, submitted by the Canadian Broadcasting Corporation;

Radiotelevisione Italiana Prize for musical works

Neffru — music by Zbigniew Wisziewski and libretto by Zbigniew Kopalko, submitted by Polskie Radio;

Radiotelevisione Italiana Prize for literary and dramatic works

Embers, by Samuel Beckett, submitted by the British Broadcasting Corporation;

Italian Press Association Prize for documentaries

The Death of a Wombat, by Ivan Smith, submitted by the Australian Broadcasting Commission;

Prix Italia for a television documentary in the form of a telerecording of a live broadcast

Medico, by Robert Barr, produced by David E. Rose, submitted by the British Broadcasting Corporation;

Prix Italia for a television documentary in the form of a filmed production

Morning in the Streets, by Denis Mitchell and Roy Harris submitted by the British Broadcasting Corporation;

Prize of the Town of Sorrento for a television documentary

Bali, the Fisherman and the Dancer, by Giorgio Moser, submitted by the Radiotelevisione Italiana.

These results show that the main preoccupation of the three juries for radio works and the jury for television was to single out those works which best satisfied the letter and the spirit of the Regulations, in other words, those among the 45 radio and 21 television works submitted which are not only satisfying in the aesthetic sense but do most to enrich radio and television experience.

There was high praise in Sorrento for the winners who were present, but the general impression was that all the entries had been of particular interest and that it was unfortunate that there were not more prizes for other works deserving distinction on more than one count.

But that is the glory of the Prix Italia: to enlist the aid of artists and invite them to produce works combining artistic prominence and a standard of performance satisfying both of the media the Prix is endeavouring to support — sound and television broadcasting.

In the far-off days of September 1948, the organisers of the Prix Italia probably had no idea that their initiative would acquire such importance and attract so many members, but when they went back this year to Capri to celebrate the 12-year-old Prix in the place where it was created, they realised with great satisfaction that its fame had gone echoing round the world.

Part A (Technical) of EBU Review No. 58 contains:

- an article by U. Stepputat dealing with back-projection in television,
- a description of the RTF's broadcasting house in Algiers, by M. Godin,
- a discussion of the role of the "ampex" video-tape recording equipment in routine operations, by K. H. Baer and P. Vend,
- information about the technical activities of numerous sound and television broadcasting organisations, including a report on the VHF/FM networks in Metropolitan France, a detailed description of the Stockholm-Malmö micro-wave chain (the "back-bone" of the Swedish television

network), details of improved short-wave transmitting aerials recently taken into service for Radio New Zealand, recent developments in sound and television broadcasting in the United Kingdom, descriptions of the modernisation of some of the studio centres at Hilversum, Netherlands, and details of newly-opened or modified transmitting stations in the German Federal Republic and in Italy,

- together with a report on the situation in the European long and medium wave broadcasting bands on 1st November 1959 and brief accounts of the recent London meetings of the Technical Committee of the Union and of the executive group of Working Party L (international television relays).

The 1959 Foreign Ministers' Conference in Geneva

An Interesting Experiment

I. IN SOUND BROADCASTING

Need for special organisation

Whenever a major international Conference is convened in Geneva, the Genevese authorities responsible for the general organisation of such an event summon a number of personalities representing the federal powers, the *Intérêts de la Ville*, the C.I.D., the hotel industry, the Press, the Post Office and telecommunications. Radio and television are naturally represented too, because it is impossible to conceive of any event on a large scale being held without their assistance. One point should be made clear, however: it is not so much a question here of providing the information media necessary for informing the Swiss public, as of supplying radio and television reporters with the technical facilities to enable them to carry out their professional duties.

The problem is not an easy one to solve in Switzerland because radio and television are neither governmental nor commercial. Non-governmental implies that the authorities must approach the company authorised in Geneva to broadcast sound and visual news, namely, the Société Suisse de Radio et Télévision (SSR), and request it to place the necessary equipment and secretariats at the disposal of users. Non-commercial means that the licensee will not be able — like the postal authorities, for example — to enter into a contract offering anyone the means to broadcast at appropriate times in accordance with standard rates. Geneva has always felt, indeed, that it was its duty in this field to offer its services free to all comers except commercial companies outside Europe which work on very different lines. And it is perhaps a point in its favour, that this international city has been able to appreciate the true value of telecommunications since the days of the League of Nations. In fact, at that time they even went so far as to cut down the use of the broadcasting studios in the Salle de la Réformation to a minimum in order to put all the available installations at the disposal of the delegates! Such a thing seems hardly possible today.

New developments, new plans

The top-level Conferences held in Geneva in 1954 and 1955 are still fresh in our minds, especially the one that came to be known as the Big Four Conference. Even at that time, a whole system of arrangements had been devised, and one might easily suppose that the same arrangements and the same organisation would suffice on

this occasion. Such was not the case, however, and we can only bow to the facts. Each Conference has its own particular features, its own atmosphere and special needs, and this means, as indeed it will always mean, that the problem will have to be solved afresh each time. We are dealing with men at work, not machines, and their reactions are largely unpredictable. By way of an example, I need only mention the emergence of a technique which now requires with increasing frequency that the radio reporter should produce a sound documentary instead of a simple commentary, even in the case of reports on press conferences! But after these general remarks, it is time to say something about the organisation of the broadcasting services of the Conference.

A difficult problem

Here is the problem. Radio-Genève must cope with its normal daily work and has neither the premises nor the staff, nor for that matter the equipment, necessary during the period of the Conference. It is true, there are three studios at the Palais des Nations and six at Press House, but they are not all equipped throughout the year. It is also true that seven temporary studios were built at the premises of Radio-Genève for use during major conferences, but this number proved insufficient, and *more than 16 special studios* had to be equipped and serviced, independently of the eight studios for normal broadcasting. It was at this point that the Swiss sense of solidarity intervened. Radio-Genève represents the Société Suisse de Radiodiffusion in Geneva and is one of its members just like Basle, Berne, Zürich, Lausanne and Lugano, and the Shortwave Service. Each of those organisations was therefore asked to send technicians and operators, as well as the equipment which the postal authorities have put at their disposal. Then Radio-Genève collected a group of auxiliary workers from the aerodrome, the shortwave amateur organisations, and even the *chasseurs de son*. And in this way a team was formed which was certainly heterogeneous but whose willingness was beyond question. The secretariat was provided by Radio-Genève and was placed under the direction of a specialist from the regular staff. A few days' instruction before the Conference, meticulous organisation, a sense of adaptability and the greatest flexibility in the timetables — precautions and standards such as these make it possible to provide radio reporters with machinery that will satisfy even the most exacting.

Importance of broadcasting

All the activity connected with the broadcasting of the Conference was shared this year mainly between Press House and Broadcasting House, throughout the long period from 11th May to 5th August 1959 (with a break of three weeks in the middle which did nothing to simplify matters!) in the 13 studios equipped with independent control rooms, conference tables, and recorders at speeds of either 7½ or 15 inches. In addition, improved models of certain machines were used for the more complicated set-ups. All the control rooms were equipped for transmissions in duplex with foreign broadcasting stations. The fact that 148 radio reporters from 56 separate institutions regularly followed the deliberations of the Conference and the number of programmes broadcast by them reached the unprecedented figure of 2644, i.e. 1752 during the first stage and 892 during the second, gives some idea of the difficulty of the task. Incidentally, it would be interesting at this point to have a look at the complete list of these transmissions in the tables below.

To cope with this situation and service all the studios, the two recording centres and the two secretariats, a team of 57 workers had to be mustered and they had to be on call continuously throughout 63 working days. It is perhaps interesting to note that the time-table of each of these operators could not be fixed for longer than 24 hours in advance, in accordance with the progress of the daily talks, and this was perhaps the most difficult thing to accept. And although the peak hours were usually from 11.00 to 13.00 and 17.00 to 20.00 hours,

Switzerland	First Stage	Second Stage
Beromünster	29	18
Radio-Lugano	14	5
Radio-Lausanne	20	20
Radio-Genève	22	7
Shortwave Service	15	9
Totals	100	59

there were occasions when programmes had to be provided far into the night.

It was noticed that reporters preferred to work in the frequently strained and feverish atmosphere of Press House rather than in the peace of Radio-Genève's studios. This is an important fact to bear in mind when considering the lay-out of the future Congress House for which plans are now being studied. For the first time, too, difficulties arose in connection with the race to reserve studios and broadcasting time. The chase after instantaneous transmissions of news reached such a point that it became necessary to hide the reservation lists from the radio reporters in their relentless determination to track down competition and get there first! And we can see the time approaching when, in the manner of Jules Verne, they will broadcast passages from the Bible so that they may be sure of being on the air at the critical moment!

It must be obvious that the load of extra work which Radio-Genève has to shoulder during top-level Conferences is enormous. But that is just one of the natural obligations of a studio that makes it its business to give priority to international news in all its forms.

René DOVAZ
Director of Radio-Genève

II. IN TELEVISION

At the time of the previous top-level international Conferences in Geneva in 1954 and 1955, and in particular the Big Four Conference, television in Europe was still in its infancy (BBC and RTF excepted) and visual news had not acquired the importance it had throughout practically the whole of the recent Foreign Ministers' Conference, notwithstanding the direct relay of the opening ceremony of the Big Four Conference from the Palais des Nations over the whole of the Eurovision network.

The 1959 Foreign Ministers' Conference gave Swiss television the opportunity to offer its technical assistance to all the foreign television organisations which had sent representatives to Geneva (journalists, reporters, cameramen and others) to attend to the developing of newsfilm on the spot and the broadcasting of live news.

What were the production facilities at the disposal of the Swiss television service in Geneva for making live broadcasts and shooting film during the two stages of the Conference, i.e. from 11th May to 20th June and from 13th July to 5th August 1959?

	First Stage	Second Stage
Belgium	40	—
Canada	34	20
Czechoslovakia	6	6
Denmark	4	—
Finland	19	9
France	310	107
Germany (Democratic Republic)	81	55
Germany (Federal Republic)	162	73
Greece	7	—
Israel	9	6
Italy	1	2
Japan	67	24
Luxembourg	—	60
Monaco	40	23
Netherlands	69	27
Norway	15	15
Poland	61	22
Portugal	10	—
Rumania	35	25
Spain	5	—
Sweden	16	24
Tunisia	30	3
U.S.S.R.	4	2
United Kingdom	159	60
United States	462	265
Yugoslavia	6	5
Totals	1652	833

1. PERMANENT INSTALLATIONS

(a) **One studio** (at the Boulevard Carl-Vogt) equipped with three cameras, film-scanners for 16 and 35 mm film, and fixed set and lighting. This studio was placed at the disposal of foreign services before and after the broadcasts of the Swiss television service, i.e. up to 20.15 h. and after 22.00 h. The Swiss service closed down its programmes regularly at 22.00 h. to enable the representatives of foreign television services to make use of the only studio equipped with all the necessary material for live broadcasts requiring three cameras.

(b) **The outside-broadcast vehicle.** This van could have been used for a broadcast of the official opening of the Conference from the Palais des Nations, but as our cameras would not have been allowed inside the Conference after the first five minutes, there would not have been much interest in such a broadcast.

Apart from this, the van could not be used to service a temporary studio as it was needed to provide reportages for the programmes of French-speaking Switzerland, and it was not possible to deprive Swiss viewers of an important part of their live programmes for practically three months.

2. TEMPORARY INSTALLATIONS

(a) **One studio** (at the Villa Mon-Repos) equipped with two cameras and fixed set and lighting, functioning quite independently of the studio in the Boulevard Carl-Vogt.

We should mention in this connection that the Mon-Repos studio was brought into service thanks to the close collaboration with the PTT which installed a second provisional radio link between Geneva and the relay station at La Dôle. This supplementary link made it possible to send out two programmes simultaneously and thus meet the demands of our correspondents.

(b) **One studio** at the Palais des Nations for filmed broadcasts with fixed set and lighting.

(c) **One studio** at Press House, also for filmed broadcasts, with fixed set and lighting.

All these facilities were ready three days before the beginning of the Conference and in order to service all the studios we called upon specialised staff from the German-language programme and had the very valuable assistance of some members of the foreign television services.

It should be noted in passing that certain of the Swiss French-language productions usually done in the studio, such as plays, were cancelled to allow Swiss staff to give technical assistance to foreign television services.

Rapid development of newsfilm

The chase after pictures was very keen especially during the critical stages of the Conference. To meet the numerous demands for developing film on the spot, a temporary installation was set up at the Villa Mon-Repos. Local facilities proving insufficient for our needs, we were fortunate in being able to count on the assistance of the RTF which brought a mobile laboratory to Geneva for the first part of the Conference, together with its crew of six. The ARD too provided an editing table and the services of a film editor.

For the second stage of the Conference, from 13th July onwards, we were able to hire a developing machine (Debie-Aiglone) and it proved very satisfactory apart from two breakdowns connected with running-in. Thanks to this equipment installed provisionally for the coverage of the Conference, the foreign organisations and Swiss television service were able to produce material filmed one hour before the broadcast. These sequences, filmed and

developed rapidly, made it possible to heighten considerably the interest of the special broadcasts.

Offices for foreign delegations

We installed in the premises of the Villa Mon-Repos 4 delegations from foreign television services which had a permanent team in Geneva.

Producers

A number of Swiss television producers made considerable efforts to ensure that the special transmissions for foreign countries passed off successfully.

Live broadcasts

The total number of transmissions produced for foreign organisations was 116, and they were distributed as follows: ARD, 48; RTF, 42; BBC, 4; RAI, 6; ITA, 2; EUR, 10; SRG, 4.

Among the special broadcasts it is also worth mentioning the three programmes on Sundays at 12.15 from the Carl-Vogt studio, featuring discussions with the participation of from six to eight foreign journalists.

The film service accomplished certain tasks for the RTF, the CBC, the ITA and the MBS. All the foreign organisations attending the Conference frequently made use of the studio at Press House to make films of their own, particularly the CBC.

Conclusion

This Conference gave us the opportunity to carry out a number of interesting experiments.

In view of the fact that the different stages of the Conference were spread over the months of May, June, July and August, our regular programme service was not too incommoded by the additional load of work, and all the requests received from foreign organisations were satisfied. But if another Conference were to be held before the end of the year, we should then be obliged to take drastic measures to limit the output of our French-language service and reduce the production of live broadcasts from the studio in the Boulevard Carl-Vogt.

A word in conclusion about the staff of the Swiss French-language television service. Without exception, everybody had a share to a greater or lesser degree in the special tasks that fell to our lot during this Conference; from the stage-designer to the mechanic, from the producer to the chauffeur, via the technical staff, the cameramen and the continuity personnel. And with their help, the Swiss television service was able to contribute to the diffusion of visual news by the various foreign television organisations.

René SCHENKER

Deputy Director of Swiss Television

School Broadcasting in Japan

by Jukan Shoji

Chief of the Programming Study Section,
Radio and Television Culture Research Institute, Japan Broadcasting Corporation (NHK)

The Background

The educational functions of radio may be divided into the function of social education and that of school or supplementary education. In Japan's broadcasting industry, which was commenced in 1925, the field of social education was the first to develop. School education by radio was conceived even from the initial stage following the pattern of Britain and other countries, but it was in 1935 that school broadcasting was formally started.

The history of Japan's school broadcasting dates back to November 1933 when the Osaka Central Broadcasting Station systematically beamed music and story programmes to approximately 3,500 primary schools in its area. In view of the favourable reactions and effects NHK decided to develop broadcasts to schools on a nationwide scale. With the commencement of programming for national network broadcasting by the Tokyo Broadcasting Station from April 1935, broadcasts to schools began to be called "school broadcasting".

The Instruction by the Vice-Minister of Education and the Rules Concerning the Enforcement of the National School Law then issued were instrumental in establishing the position of school broadcasting as part of regular school education and in increasing its uses. On the other hand, however, as school broadcasting infiltrated into the educational world, it came to be charged with an additional mission of supplementing text-books, and its programming became increasingly subject to the influence of the authorities concerned. The programmes in the initial stage contained in them current problems for use at the morning gathering at school as well as the subjects of the school curriculum such as music, the Japanese language, science, history and geography. For the sake of teachers the *Teachers' Hour* was also created, taking up instructions on how to teach reading, treat dialects and give abacus lessons.

In and after March 1945 school broadcasting was suspended for some while because of the devastation of receiving sets as a result of air raids and other factors during World War II and also because of the curtailment of broadcast hours due to radio wave control. However, it was resumed in December of the same year, some months after the termination of the war.

The programmes for the primary school were divided into two: one for lower and the other for higher grades. Both of them were 30-minute programmes and were simple in form, centring on story telling. The guidance given by the Civil Information and Education Section

of the SCAP's General Headquarters, however, brought about a drastic change in the contents and form of the school broadcast programmes.

A New Conception

In other words, the programmes began to be compiled from the independent standpoint of education by radio and on the principle of offering teaching material which was intended not merely to supplement text-books, but to get unique educational effects which no other educational means could achieve. Thus the *Junior and Senior High School Hour* was started, adopting dramatized programmes.

School broadcasting had been on the First Programme until 1950 when the so-called "power holidays" appeared on account of power shortage proving a hindrance to the listening schools. Therefore a new formula of rebroadcasting the programmes for higher grades on the Second Programme on the following day was adopted for the convenience of such schools. This formula was continued even after the power situation was restored to normal for the convenience of those schools which, owing to school events and other reasons, might have failed to listen at the first opportunity. At present the programmes for primary school medium and higher grades and for junior high schools are being rebroadcast.

In April 1951 the *Senior High School Hour* came to be compiled independent of the programming for secondary schools. In 1953 *Japanese Classroom* and *Music Classroom* were added to the primary school programmes and *Radio English* to the junior high school programmes. With this replenishment, school broadcasting was entirely switched over to the Second Programme.

Programmes in Sound...

At present school broadcasting has 11 programmes and three rebroadcast programmes totalling 205 minutes a day. They break down into: *Japanese Classroom*, *Music Classroom* and *English Classroom* for each grade; primary school programmes divided into three grades: for lower (first and second) grades, medium (third and fourth) grades and higher (fifth and sixth) grades; junior high school programmes divided into Parts I and II; senior high school programmes for all the students; the *Noon Recess Present* in a disk jockey style and the *School News*. The contents of the programmes are: the Japanese language (speaking, hearing, commentaries on classics and the introduction of literary

masterpieces); music (expression and appreciation); social studies (geography, history, society, politics, economy and news commentaries); science; English; living guidance (morals); vocational guidance, guidance on careers, etc. In choosing the material for each programme, the question whether it will achieve educational effects unique to radio is the first consideration. To provide teaching material for regional education, local school broadcast programmes are also arranged carefully and systematically. They are playing a role no less important than national school broadcasts in Japan's educational activities.

... and Television

School telecasts for children and pupils of kindergartens, primary schools and junior high schools were started simultaneously with NHK's television broadcasts in February 1953. Recognizing the importance of the educational use of television, NHK and a commercial educational television station instituted educational television in September 1958 and in April 1959 respectively.

Widespread Use in Schools

The fifth school opinion poll which NHK's Radio and Television Culture Research Institute conducted in 1956 with the cooperation of the Education Ministry made it known that nearly all the schools possessed radio receiving sets and that the percentages of schools utilizing school broadcasting were 48% for the primary schools, 39% for the junior high schools and 19% for the senior high schools. These percentages have risen today to 67%, 50% and 22% respectively. On the other hand the institutes utilizing school telecasts total only 15,000 inclusive of kindergartens, primary schools and junior high schools. The figure, however, is expected to increase with the popularization of television sets.

Systematic Planning

The characteristic of school broadcasting in Japan is that its programmes are compiled systematically and democratically on the assumption that it constitutes part of Japan's educational activities.

Its programming set-up comprises the following four committees:

- (1) *The Drafting Committee* — This committee examines whether or not the programmes are meeting the needs of teachers and whether the contents and form of the programmes are right.
- (2) *The Regional Advisory Committee* — This committee is organized in each prefecture and by studying draft programmes determines the number of programmes needed.
- (3) *The Central Advisory Committee* — A supreme advisory organ on school broadcasting, this committee studies, from an overall standpoint of educational theories, practice and administration, how school broadcasting should be, and decides the final programming policy.
- (4) *The Special Committee on Each Programme* — This committee, responsible for implementing programmes, examines the programme under its charge as to its aims, contents and form.

These committees — whose members are primarily leading schoolteachers but include scholars, Education Ministry officials, leaders of boards of education and the representatives of the Society for the Study of Education by Broadcasting — represent democratic and organized activities.

School broadcast programming directly depends on the afore-mentioned persons' cooperation and advice, but it has its important reference data in the findings of school opinion polls which NHK's Radio and Television Culture Research Institute conducts and those of annual surveys on schools located in every part of the country which are specifically entrusted with the job of undertaking research into school broadcasting, and also in the findings presented by the Society for the Study of Education by Broadcasting. Needless to say, listeners' reactions to programmes, comments on them and teachers' opinions are reflected in actual programming. These findings and commentaries constitute important criteria for sizing up how school education is now being conducted, what teaching material teachers wish to have for the accomplishment of their educational objective and what they expect of the broadcasts as audio-visual teaching material. Programmes are planned with the above-mentioned elements taken into consideration and then, passing through debates at various committees, they are ready to be put on the air.

Owing to lack of space, we have been unable to publish the Eurovision programme statistics in this number but will be including them in the January issue.

Television Programmes for Australian Schools *

Second Experimental Series

The first experimental series of television programmes for schools conducted by the Australian Broadcasting Commission was held during the First Term of the 1958 school year, and was fully reported in *E.B.U. Review*, No. 53 B, p. 21. The conclusions drawn from the first series formed the basis of a second experiment conducted during Third Term 1958. Directed to the upper grades of primary schools, this second series was, like the first, carried out in Sydney and Melbourne. Each centre devised and produced ten sessions which were exchanged by telerecordings, giving schools in each viewing area 20 programmes. All ten original programmes in each centre were repeated by telerecordings in the evening programme to enable educationists, teachers, parents and others interested in the experiment, but unable to view during the day, to see what was being offered to schools.

Report forms were issued to all schools which registered as viewing. A good response was obtained, 323 being returned for the Sydney programmes and 258 for those originating in Melbourne — 581 in all. The reports received form the basis of this survey. As during the First Term experiment, considerable assistance was received from the Liaison and Educational Officers of the Education Departments of New South Wales and Victoria.

The Programmes

All programmes were directed to children aged approximately 9-11 years in Grades V and VI of the Primary School.

The Sydney series was divided broadly into two groups — *Social Studies* and *Arts and Handcrafts*. To this extent an approach was made to the planning of integrated series, though in fact such integration applied only to the second group. The *Social Studies* group consisted of the following: an introduction to the production of a television programme; a simple exposition of some technical aspects of television; a simple treatment of a number of news items; an account of how Sydney receives its water supply; the story of migrants from Hungary; and a current affairs programme on a single topic — Antarctica and the International Geophysical Year. The second group — *Arts and Handcrafts* — was made up of four programmes giving inspiration and practical guidance in preparing for Christmas, and covered the making and wrapping of presents, the making of cards and Christmas decorations.

The Melbourne programmes consisted of two series, each of five broadcasts. The first, entitled *The Nature of*

Things, dealt with the following topics: camouflage in nature; environmental nature study; an account of the utilisation of the Victorian brown coal deposits; and simple health rules. *Time for Music*, planned as an experiment in music education in the upper primary grades, concerned the strings, the brass choir, songs of the sea, rhythm and folk music.

The Schools

For this Third Term experiment, it was left to the schools themselves to obtain receivers, to see how far this could be achieved without official sponsorship. In Sydney, 53 schools registered as having sets and in Melbourne 54. Mostly the schools were in the metropolitan area in each centre, but there was also a good scatter of country schools up to nearly 100 miles from the transmitters. There were no adverse comments about reception conditions, and it would appear that the conclusion drawn from the First Term experiment was again valid: that if steps are taken to exclude some of the direct natural light an average class-room is quite suitable for television viewing from a normal 21-inch screen without extensive rearrangement of seating.

The response was most encouraging and the number of schools taking part far exceeded what had been anticipated.

Supplementary Material

Teachers' Notes were issued some time ahead of the broadcasts to provide a synopsis of the programmes and to assist teachers to prepare their classes prior to transmission. Judging by the interest aroused, these notes will have to be prepared in future in a more ambitious way and issued in printed form with adequate illustrations. It became evident that they form an essential part of the work.

Evaluation of Programmes

Teachers were invited to evaluate each programme on a 10-point scale under the headings: amount of material, maturity level, development of topic, tempo of presentation, and pupil reaction. Taken as a whole, the reports indicated a very favourable reaction to the programmes and showed an encouraging assessment of the weakness and strength of each programme.

In the series *Social Studies*, there was a steady improvement in judging the correct amount of material to be presented. The development of the topic scored more highly when the basic procedure was modelled on classroom teaching. The tempo of presentation was generally satisfactory, though more suitable in the current affairs telecasts than in the others. The programme *In the News*

* This text is based on a more detailed report sent to us by our ABC correspondent.

— treating three topics in a single telecast — received the second highest rating although the programme planners had felt after the broadcast that the attempt had been too ambitious. It must be concluded that the bringing into vision of a broadcaster long popular in sound programmes, coupled with the suggested potential of television in the field of current affairs, had much to do with it.

From the outset, in planning this series, there was pressure from teaching groups to keep closely to the school syllabus and, at the same time, adopt more or less conventional classroom methods. In other words, there was a strong move towards presenting the programmes as “master lessons”. Yet the programme on Sydney’s water supply, which was perhaps the nearest of all the telecasts to a straightout classroom lesson, was among the less highly rated, while *Behind the News* (Antarctica and the International Geophysical Year) in which production moved furthest away from the conventional classroom, was the highest-rated of the series.

The conclusion which may be drawn is that teachers at the outset looked for basic classroom procedures in the telecasts, but that, given programmes of a wider nature, making greater use of true television techniques, they began to change their minds and actually to ask for something on television which they could not do for themselves.

The programmes on *Preparing for Christmas* represented an integrated series, characterised by a common theme, a definite aim progressively unfolded and the use of the same talent. There was some conflict of opinion about the objective for this group of programmes. The teaching experts, having in mind the serious lack of trained Art teachers in primary schools, saw the telecasts as an opportunity to present demonstration lessons. Further, they opposed any idea of making the sessions instructional, claiming that the children should be motivated to exercise their own imaginative and creative powers. The final compromise was not altogether successful, but over the series development did take place and viewing teachers became increasingly enthusiastic as the series proceeded.

The Nature of Things was a conglomerate of nature studies, health and the physical aspects of geography. Such subjects are natural material for school television and the programmes were mainly experiments in method. All were related to sections of the normal school curriculum and the main problem became one of selecting or devising new or different material. Again a number of interesting problems arose, indicating that there are factors requiring further study. *Signs of Spring* (environmental nature study) was felt by those involved in its preparation and production to be a failure, perhaps the poorest programme of the series, yet teacher reports indicated that this session shared top rating in terms of pupil reaction which could, ultimately, be one of the most valuable criteria.

The close link between school curriculum and subject matter largely accounted for the general favourable reaction but, at the same time, it is interesting to note that all programmes received a wide scatter of ratings under all five headings.

In the *Time for Music* series, each programme was a separate entity. An attempt was made to gather teacher opinions on a variety of approaches before planning a complete series on one of the many aspects of music education. *The Violin*, for instance, enabled the ABC and teachers to study the problems of holding attention with one instrument. *Songs of the Sea* attempted to interest the children in a recital type programme with a central theme.

The maturity level rating for this series was high and this was encouraging in view of the fact that new ground was being broken with these programmes. Apparently the planning resulted in the right material being directed to the right age level. But the pupil interest ratings were not as high, although there was a wide variation from session to session.

General Assessment

Throughout the experiment there was an encouraging interest among teachers, both those participating and others who could view the programmes only during the evening repeats. The standard of reports submitted was on the whole high, and it was obvious that much thought had been given to programme evaluation and that there had been considerable staff discussion. Overall, it was felt that the general assessment was high, perhaps over-generous. Throughout the series the large majority of ratings lay between 8 and 10 under all five headings. This was possibly because the medium was new and, in its way, provided an exciting experience in the classrooms of primary schools. But at the same time there were significant low scores that caused devisers and planners to indulge in some healthy analysis of their programmes.

- (a) **Amount of material** — this was nearly always acceptable and no significant adverse trend was noted.
- (b) **Maturity level** — this, too, was good but most complaints that did arise were on the grounds of over-simplification. It became apparent that the explanation by picture, in general, permits a somewhat higher level of material.
- (c) **Development of topic** — good scores were in the majority, but there was a wider scatter of low scores where the complaints seemed to indicate that the availability of pictorial material should not be permitted to dominate the “story-line” of the programme.
- (d) **Tempo of presentation** — satisfactory in almost all reports.
- (e) **Pupil reaction** — this was regarded as possibly the most important of the ratings. Some useful leads were given towards factors which permit interest to slacken, such as direct exposition by the narrator or illustrative material not directly relating to the subject matter.

In reply to a direct question about pupil reaction, 79% of teachers classed this as “interested” and only 8% indicated that the classes were critical to the point of losing interest.

Suggestions

A number of general suggestions were contained in the reports which may be summarised thus:

(i) Best programme time for primary schools

Almost all recommendations were for the late afternoon; 91% of teachers asked for afternoon times as opposed to mornings, and 63% asked for late afternoon (i.e. 2.30 p.m. or later, according to the time of school closing).

(ii) Length of programme

The assessment by teachers of the ideal length of programme varied between 15 and 40 minutes with 55% supporting a 20-minute duration.

(iii) General reaction to television

Of those reporting, 70% expressed keen interest in the experiment itself and in the idea of using television as a teaching aid. Only 7% opposed the idea, and the remaining 23% made reservations pending modifications and further experimentation.

(iv) Fields for future programmes

Organised under wide headings, the principal suggestions were: social studies including current affairs; literature and drama; nature study; music; art.

Conclusions

The reports from schools, though in general not as detailed as those received during the experiment for secondary schools in Term One, were constructive and provided sufficient evidence to enable some general conclusions to be drawn.

1. So far as presentation is concerned, it became obvious that interest drops rapidly if a poor speaker is used, no matter how competent his grasp of the subject may be, or indeed if any speaker is kept in vision too long. The "talking face" would appear to be the most effective way of killing interest. But the adequate use of good illustrative material, particularly of film shot and edited at a slow pace to enable sufficient attention to be devoted to it, almost inevitably makes for success.

In one programme, the speaker, though experienced and capable as a teacher, suffered a sudden attack of nerves as the programme went on the air and, from the point of view of planners and producers, the session appeared to fail completely. Yet the reports from schools praised the selection of film and its stimulating qualities and this programme finished with a pupil rating as high as any other programme.

2. It would seem that teachers are convinced that television has a place in the classroom of the primary school and that if programmes are pitched at the right level and varied suitably in presentation they can sustain children's interest.

3. Teacher reaction seems to indicate that the programme should teach and that it should be related to the

syllabus, but it became apparent as the series progressed that teachers began to realise that television must use its own methods and that it should appeal to the children, not guide or instruct the teachers. As for the methods themselves, what these are, how varied and adaptable they are, is something about which much has still to be learned.

4. As a course of programmes, the primary school experiment would appear to have been an advance on the secondary school experiment. It would seem that those responsible for programme planning, detailed devising and production had come a long way between First and Third Terms. There appeared to be a better understanding of the medium and of its potential in the classroom.

5. Many of the conclusions reached at the end of the first experiment were evidently still valid: the need for variety of presentation, the avoidance of straight classroom techniques, the value of adequate pre-knowledge of programmes and the acceptance of the medium as being of educational value. The overall favourable reaction fully warranted the experiment at the primary level and experience seemed to confirm that the reduction of time to 20 minutes was right.

Postscript

From the two series of experiments, school television designer/producers and school viewers, both teachers and children, have acquired some practical experience of the medium. It now becomes important to develop three basic aspects of classroom television.

1. Exploration of a wider range of subject matter, including such fields as mathematics, science and drama, and a wider range of presentation techniques, such as dramatised inserts, and the production of plays studied in school.

2. Experiment in the provision of series of programmes integrated with the school curriculum to determine the optimum length of such series and ways in which television can supply material and presentation that could sharpen classroom experience.

3. Experience in schools of ways in which the single television receiver can be used to the greatest advantage. This involves questions of age range and variety of programmes and of programme frequency that will warrant the equipping of schools with television receivers.

For these reasons the school year 1959 is providing further experiments through a daily television programme. As the year has progressed there has been a widening of the age groups to which the programmes are addressed and continuous exploration of means of approach most suitable to the various age groups and types of programme content. In addition, schools have been given opportunities to view telerecordings of outstanding British school programmes.

The ABC and the Education Authorities will together study the longer-range problems of school television as the first novelty appeal passes and more objective judgments are possible.

News and Information

The Salzburg Opera Prix was held at the end of August. The jury, under the chairmanship of Mr. Gerhard Freund, Director of Austrian Television, was composed of eight members, of whom four were nominated by the EBU, two by the city of Salzburg, and two by the IMC.

Ten operas created specially for television in eight countries were examined:

Austria (ORF): *Passkontrolle*, Paul Angerer; *Peter und Suzanne*, Paul Kont.

Belgium (NIR, Flemish broadcasts): *Le Débat de la Folie et de l'Amour*, David van de Woestijne.

Germany (NWRV): *Die Auszeichnung*, Hans Poser.

Italy (RAI): *Le Campane*, Renzo Rossellini.

Japan (NHK): *Shuzenji Monogatari* (The story of a maker of masks), Ozamo Shimizu.

Netherlands (NTS): *Salto Mortale*, Henk Badings.

(KRO): *Kalchas*, Jurriaan Andriessen.

Switzerland (SSR): *Seraphine oder Die stumme Apothekerin*, Heinrich Sutermeister.

United Kingdom (BBC): *The Spur of the Moment*, Guy Halahan.

The Prix was awarded to *Passkontrolle*.

Die Auszeichnung received a special prize and *Salto Mortale*, an opera with electronic music, was highly commended.

Canada: The CBC Reorganised

Major changes in the organisation of the Canadian Broadcasting Corporation have been announced by the president, Mr. J. Alphonse Ouimet.

There will be a regrouping of eight departments and eight operations divisions, under a vice-presidential staff and three divisional general managers. These vice-presidents will be responsible for the four head-office groups of programmes and sales, engineering and operations, administration and finance, and corporate affairs. The three general managers will direct the activities of the English and French networks and regional broadcasting. They are to have full authority over all operations of the CBC's broadcasting divisions, in accordance with corporate policies, and will form direct links between the head office and operating points. They will be accountable to the president for all programme production in their areas.

Finland: Steady Development of Television

Twenty thousand viewers had taken out licences by September of this year—an increase of over 12,000 since the end of 1958. The original stations of Helsinki and Turku have been joined by five others in Tampere, Lahti, Riihimäki, Tammela and Kotka, connecting the whole of the southern part of the country to the network.

Programmes are transmitted every evening for 3 or 3½ hours. The independent television advertising company, Oy. Mainos-TV-Reklam Ab., which uses the Finnish Broadcasting Company's facilities, sends out

advertising programmes before and after the evening transmissions and also between 12.00 and 12.30 h. on four week-days.

So far about half the programme has consisted of film, but the acquisition of a vehicle for outside broadcasts has greatly widened the scope. Expenditure on television during 1958 amounted to 130 million marks, of which 51 m. was covered by income from licence fees and advertising.

France: Society for the Promotion of Learning by Audio-Visual Means

A new society has been formed in France under the designation *Association pour le Développement des Connaissances par l'Audiovision*. Its headquarters are in Paris, 27 rue Saint-Guillaume, and its purpose is to encourage production by audio-visual means of documentation and works calculated to promote culture and learning in every sphere. Its chairman is Mr. Fernand Terrou and its members include Maître Henry Torrès, chairman of the RTF *Conseil Supérieur*, and Mr. Christian Chavanon, Director-General of the RTF.

Germany (Federal Republic): Second Television System

The draft of a new federal radio and television law, which was approved by the West German cabinet on 30th September, provides for a second television system. The new corporation would produce no programmes of its own but would sell time to private companies, which would finance themselves by accepting advertising.

The Bill also includes plans for two federal sound broadcasting corporations, one of which would broadcast to Germany and the other to foreign countries.

New Zealand: Television Developments

Investigations into the future establishment of television are well under way. In February 1959 the Minister in Charge of Broadcasting invited submissions from interested parties on any aspect of television, to be examined by the committee set up to advise the Minister. In October 1958 the New Zealand Cabinet had approved the expenditure of £16,100 for the purchase of capital equipment to establish the experimental television transmissions on the 625-line system at Auckland. Up to 31st March 1959 a total of £10,095 had been spent.

Norway: Entry into Eurovision

Norwegian television joined the Eurovision network officially at the beginning of October.

It gives us pleasure to open the Eurovision circle to its 14th member and to extend a special welcome to Norsk Rikskringkasting and its distinguished Director-General, Mr. Kaare Fostervoll.

Eurovision, which is a creation of the European Broadcasting Union, now stretches from the extreme north to the south of the continent of Europe. We take this opportunity to offer our congratulations to those who created and those who work for this remarkable project.

The Protection of Sporting Events¹

by Professor Amedeo Giannini, Rome

Summary: 1. Shows and sporting events. 2. Lardner's view of the suitability of sports events on TV. 3. Classification of sporting events. 4. Demands of the CONI and the sporting associations: actual cases. 5. Freedom of coverage. 6. The non-existent rights of sporting associations. 7. The action for unjust enrichment. 8. The right of the contestants in sporting events to remuneration. 9. Reporting of sporting events. 10. Documentaries on sporting events. 11. Conclusions.

1. In the Italian Public Safety Act the term "entertainment" has a very wide connotation, being defined as "any event" held in a public place or in premises open to the public (section 62). The provision is dictated by the need to keep the peace and see that the law is obeyed, and accordingly the grant of police permission to hold the event is contingent upon an appreciation that these two ends will not be frustrated. Another statute, the Italian Copyright Act, specifies in section 15 the circumstances in which an entertainment is a "public" one, but it does so for a different and more limited purpose²—that of determining when a recitation or performance of a copyright work should not be deemed to be a public performance for the purposes of the authorisation which must be secured from the author when an entertainment is given in public. Such authorisation is essential before a licence for the entertainment can be obtained from the police authorities, who are unable to issue it unless it can be shown that the fees payable to the author in respect of the work that forms the subject-matter of the entertainment have been paid (section 68).

Sporting events are thus entertainments within the meaning of the Public Safety Act, but since no copyright subsists in them they are licensed by the police without the latter being required to ascertain whether any compensation has been paid or is payable to the organisers, even when they are aware that the event is to be filmed or televised³.

It has been said that the distinguishing feature (though not in the legal sense) between a cinematographic or stage show and a sporting event is not so much the purpose of the show as the fact that the first may be reproduced, while the second cannot.⁴ In reality, however, the difference between the two types of show lies in the

nature of the subject-matter of the show. In stage and cinematographic shows there is the performance of a work that has an author who is protected in his rights, performers who are protected in their performances, and an impresario or licensee who runs the firm organising the show. In sporting events there is an organiser of the show, but the latter has neither authors nor performers, merely the artisans of the event, i.e. the experts in the various sports. There has been no shortage of ignorant parallels between artistic performers and performers in sports meetings, but even if one approaches the matter with the highest regard for sport as a form of social expression, the theory will not hold water. The closest analogy between footballers, tennis players, etc., and performing artists is perhaps that of the ballet dancer, but even if the latter turns his exceptional muscular prowess to account, he remains an artiste performing a copyright work, which is something that cannot be said of a footballer or a tennis player. In any event the author would always be lacking; moreover, a stage or cinematographic show is not lost once it is performed, in that it can be repeated by means of a further performance of the work, whereas the sporting event is spent when it is performed. The reporter may give a written, oral or broadcast account of the event for the Press or for history, but all that remains of the sporting event, however important it may have been, is a memory.¹

Nevertheless, a new development must now be taken into account. This development is symbolised by recordings of the show for cinematographic or television purposes which make it possible to fix all or part of the event, thereby enabling it to be reproduced *ad libitum*. It must however be borne in mind that these possibilities are merely theoretical, and depend on the surroundings

¹ We are publishing this article with the kind permission of the *Rivista di Diritto Industriale*, edited in Milan by Dr. A. Giuffrè.

² There are certain considerations which make it expedient to regard some entertainments as being non-public, thereby obviating the need for authorisation.

³ It may seem strange that one should bother to endeavour to differentiate between copyrights and sports, in view of the fact that works in copyright are not performed in sporting events. The point is well taken, but we cannot refrain from touching on these matters for reasons that will be indicated below.

⁴ Cf. the judgment delivered on 15 November 1955 by the Praetor of Rome in *re Matteoli Manfredo versus Incom et al.*, quoted in *Il diritto di autore*, 1956, pp. 68-79, and the commentary by M. Ferrara, *In tema di esclusività e di divieto di riprese cinematografiche di avvenimenti sportivi*. The Praetor argues that while a basic feature of shows in

the true sense of the word, i.e. theatrical and cinematographic shows, is that they are susceptible of reproduction, that is to say, they are in the nature of things intended for repeated performance to satisfy all the possible demands of the theatregoing public, the sporting show does not possess this characteristic and exists once and once only, irreproducible in both time and space.

¹ In my view the distinction turns on the subject-matter of the show. In a film show or stage production there is a performance or rendering of a work, which is of an enduring nature and is not lost even if the performance is filmed or televised. In a sporting event the copyright work is absent, and if filmed or televised the show does not become a protected work on that account inasmuch as the creative element is lacking, both before and after the recording. This distinction between the two cases is so substantial as to rule out any recourse to analogous application of other provisions.

in which the event takes place; in other words, the event can be filmed or televised in full when it is held on enclosed premises, but where the event takes place over a wide expanse the most that can be recorded is a few episodes and not the event itself, even if a large number of cameras is used. This is the case with a walking race or horse race.

2. It is important to bear these factual situations in mind. It may be instructive to recall the conclusions reached by John Lardner as to the technical feasibility and desirability of recording sporting events, on the basis of many years' experience in America. He reviews a number of sports¹ from the standpoint of their adaptability to television and arrives at the following conclusions:²

(a) *horse racing*. 98% of racing fans are not interested in the spectacle of the horses, but rather in betting on them, and the remaining 2% pretend to follow the race.

However, although as a rule sports are telegenic in inverse proportion to the amount of ground they take up, horse racing is an exception to this rule, since the majority of the stages of a race can easily be followed by a single television camera, provided it is of fairly high power and is properly sited;

(b) *all-in wrestling*. This lends itself well to television precisely because it takes place in a confined space. It consists of a series of throws and theatrical poses, carefully worked out and rehearsed, and it is sport only in name. In the United States it is officially classified not as sport but as "show business";

(c) *boxing*. Lardner points out that TV is creating the "star complex" or "TV boxing", in that the contestants feel they are under the control of the electronic eye, and concedes that the present technical handling of TV boxing broadcasts is in need of improvement. When TV gets round to using more well-sited cameras and learns how to make the most of the right kind of perceptiveness, it can give the viewer the same thrill as it does a spectator who has managed to get his hands on a ringside seat;

(d) *American football or rugby*. In view of the peculiarities of the game, even though the field is very large, it gains in interest when televised, since it offers the sort of view one can enjoy from a central grandstand seat;

(e) *baseball*. Not suitable for television, in that the game is played in a ballpark of considerable size which must be seen as a whole, a thing that TV cannot do;

(f) *basketball and ice-hockey*. It is better to go and see the game, since it is difficult to watch these sports on television;

(g) *tennis*. Well adapted to the needs of the TV camera, but several well-located cameras are required in order to give a complete view of the court.

Lardner is not concerned with the other sporting events, not even soccer, where the position would seem to be rather similar to that of tennis.

Another reason for briefly quoting Lardner's remarks is to arrive at the conclusion that fears of television competing with sporting events to the detriment of the

organisers of those events are unfounded, and on the other hand that the technical arrangements for television can and must be improved, in order to give the viewer a good view and clear understanding of sporting events in relation to sports policy, which has become a major concern of politics in every country¹.

3. A rough and ready classification of sporting events puts them into three distinct categories, viz.—

(a) those taking place in enclosed premises, open to the public upon payment (gymnastic contests, boxing, all-in wrestling, etc.);

(b) those taking place in the open air, but in places surrounded by fences or barriers to keep the public out, who are allowed in only on payment of an admittance fee, e.g. stadiums, arenas, fenced-off playing grounds, etc. (football matches, etc.);

(c) those that can only be held in the open air in fields or on the highway itself (walking races, cycle races, motor-bike and motor races, etc.).

As regards the first two classes of sporting events it is easy for the organiser to prevent the installation of motion picture or television equipment except on terms determined by him, sometimes on the pretext of the refund of expenses, unless there are legal provisions—similar to those adopted for certain broadcasting authorities—to preclude him from opposing the installation of equipment and the making of broadcasts².

In the case of the third category, on the other hand, the organiser can do nothing to prevent filming or television.

The fact of the matter is that the show is given to the public for nothing and, one may add, is inflicted on them of necessity, even if they do not want it, do not like it, or positively detest it.

From the listener's point of view the show may be—

(i) in sound only, i.e. broadcast by radio, or

(ii) in sound and vision, i.e. filmed or televised.

The first must be organised by an expert who presents it to the listeners at the very moment when the broadcast is made. The expert must therefore be on the spot with his transmitting apparatus.

The other two are pictures taken with different technical processes, and hence the appropriate apparatus must be properly sited in the right places for taking pictures. It should be pointed out at this stage that the organisers do not bother much about broadcasting and filming, but bother a great deal about television when the broadcast is given at the same time as the event is taking place, which allows the spectator to enjoy the meeting at home, comfortably and free of charge, and brings it to him, so to speak, piping hot.

After these prefatory remarks it will be easier to examine where the interested parties stand and what it is they are claiming.

¹ It is hardly necessary to recall the long forgotten fears that radio would mean competition for concerts, the theatre, the opera, etc. However, sporting interests ask that the TV broadcast should not be given concurrently with the event itself, inasmuch as it is this simultaneity that makes people stay at home. To remove the element of competition it would suffice to schedule the broadcast a few hours after the end of the event, so that it is seen not once but a second time. This point is well taken.

² In the case of news reporting the promoter can demand the price of an entrance ticket, but cannot prevent the report from being made.

¹ In the *New York Times Magazine* of 25 December 1955.

² What Lardner says of television will also apply to films, bearing in mind that there are fewer opportunities for cinematographic exhibition.

4. The claims of the sporting organisations and their central body, the CONI, were officially put forward for the first time when the Television Bill was being drafted (1951), a Bill which has been pigeon-holed for several years now.¹

These organisations —

(1) opposed the liberty to televise sporting meetings or events held in the open air, arguing that 99% of the fixtures were held outdoors, although frequently in enclosed grounds. In other words, they wanted it to be stipulated that this concession referred to meetings held on unenclosed ground and without payment on the part of the public. Even then they held it necessary to respect certain highway events (the Giro d'Italia, other cycle races on the roads in general, the Mille Miglia motor race, etc.), and generally any events that involved professional athletes or in which the latter competed. It need hardly be said that this left people free to televise precisely nothing;

(2) demanded that it be expressly laid down that any sporting events or meetings whatsoever, wherever held, could be televised only with the permission of the CONI (*Comitato olimpionico nazionale italiano*) or its member sporting federations, on the grounds that the CONI, pursuant to the Act of 16 February 1942 as amended on 11 May 1945, has the task of co-ordinating and controlling all sporting activities in Italy, however and wherever carried on;

(3) claimed that even televised sporting events shown in public places should attract equitable remuneration, the beneficiary being the organiser of the sporting event.

All this was *de jure condendo*, but as has already been stated, the Bill did not pass. In the absence of special legislation and hence on the basis of the existing law, the following actual cases have been recorded:

(a) In September 1951 the Automobile Club of Milan granted Incom the exclusive world film rights for the 22nd Italian Grand Prix on the Monza motor racing track. CIAC, the company that produces *Cinesport*, a newsreel devoted to sports news, also managed to make a film of it, and accordingly the Automobile Club of Milan sent solicitor's letters to the various cinemas in which the *Cinesport* reel was to be shown warning them not to exhibit it. As however the exhibitors refused to comply with the formal notice from the solicitor, they were threatened with seizure. CIAC retaliated with a counter-notice and carried the matter to the Milan Tribunal for a ruling on the seizure issue. However, an out-of-court settlement between the three parties put an end to further proceedings in this dispute.

(b) Este Film had secured from the promoter the exclusive film rights in the Mitri v. Turpin fight (which was over in one minute). It made an application to the Praetor of Rome for an order confiscating the newsreels made by Incom and Astra Cinematografica, or alternatively that part of them which related to the match. This dispute, too, was cut short by an agreement to pool the footage taken.

(c) The Starter Co., alleging that it had acquired from UVI the exclusive cinematographic rights for the World Cycle-racing Championships organised by the latter on

the Frascati circuit, brought a motion for the confiscation of the corresponding film made by Incom, Sedi and SMB, but the case—in which, among other things, copyright protection was invoked—was dismissed by the Praetor of Rome in a noteworthy judgment (5 November 1955, reported)¹.

5. Lastly, it may be well to look into the arguments adduced by the CONI at the relevant time to prevent sporting events from being televised at will. According to them it was a question of safeguarding the interests of the promoters, who are involved in enormous expense in getting up meetings of this sort, against the threat of a falling off in receipts, which would hit them hardest when the broadcast was given simultaneously with the event because it would keep away those interested spectators who happened to possess a television set and who could therefore enjoy the show at home and appreciate it all the more for not being distracted by a feverish mob of "fans". This opinion is not generally shared, however, the argument being that the element of live, personal participation in the meeting is absent, and so is the environment that grips the spectator and keeps him on tenterhooks, crossing his fingers that his favoured team or contestant will win—in a word, all that goes to make up the very essence of the "fan" spirit. It is also objected that competition may not always result in loss. If I go to watch a walking race or a cycle race, I may with luck see a few snatches of the contest. If I see it in the cinema or on television I can get a much better idea of it without in the least damnifying the organiser of the event. As has been pointed out above, some events do not lend themselves to reproduction on film or TV, while others do so only with the help of various technical dodges. Some gain by being filmed or televised, while others lose in the process. Consequently one cannot make a categorical statement that the filmed or televised version always represents damaging competition for sporting events by keeping the spectators away and thus reducing the receipts.

6. In relation to the considerations set out above, the following conclusions suggest themselves²:

(a) the promoter of a sporting event does not become the author of the event, nor does he become its owner. He does not become the author inasmuch as he does not create a work of the intellect: the organisation of an event, even if it is a masterpiece of organisation, is not a work of authorship. He does not become the owner by the fact of making whatever arrangements are necessary for the meeting to take place (renting the stadium, providing catering services, advertising, etc.) without taking part in it himself, inasmuch as the event goes off quite independently of him. Nor can the event be regarded as a kind of goodwill which, together with its actual or potential commercial value, forms part of his net worth. Hence, as he has no rights in the event, he cannot transfer them, that is to say their exercise in the

¹ This does not mean that there have been no other cases.

² It may be asked why we are bothering about references to copyright law and its possible applications by analogy when copyright and sport have nothing in common. The answer is simple. Those who concern themselves with the law of sports have in all seriousness invoked copyright for the protection of sporting events. Accordingly it must be demonstrated in all seriousness that their contentions are without foundation.

¹ Cf. my article entitled *Televisione e diritto d'autore in Rivista di Diritto Industriale*, 1953, pp. 1 ff.

way of business, to others. Accordingly he cannot assign away the film and television rights, either exclusively or to several takers;

(b) the persons competing in the events, whether they entered of their own free will or were engaged to play, and whether they are amateurs or professionals, are not performing artists within the meaning of section 80 of the Copyright Act and article 2579 of the Civil Code, in that they do not act a part but rather lend their physical prowess and skills for the purposes of the sporting event. If, however, they have been engaged and have not volunteered their participation in the event, they qualify as "purveyors of labour" (i.e. employees) and their relationship to the promoter is governed by the provisions of Articles 2099 ff. of the Civil Code.

In the absence of any special legislation, and hence on the strength of the substantive law for the time being in force, there can be no question of any claims by the promoters and the competitors as authors and performers respectively, or by the promoter as the proprietor of the entertainment, just as there can be no interference by the CONI apart from the powers vested in it by the statute which established it, and which lies outside the sphere of private law.

7. Nevertheless it cannot be denied that the promoter of a sporting event has to lay out what are sometimes enormous sums of money in order that the event may take place, and it is therefore just that those who enrich themselves by taking cinematograph or television pictures of it should relieve him of a share of the expense. It should be observed at the outset that this is not always the case. If the event is held on the highway or in some place which is freely accessible to the public, so that they are both able to and expected to witness the proceedings free of charge, no one can prevent motion picture or television equipment from being installed or prevent the pictures from being taken. The question could only arise, if ever, where the event took place in enclosed premises or precincts to which the public were admitted on payment. Even on this supposition it is needful to distinguish the reimbursement of outgoings or payment of remuneration due to the organiser in respect of work or services rendered in order to make it possible to set up the cameras, etc., which is merely the payment or repayment of costs or fees for specific services, from the price he may demand for allowing the film or broadcast to be made. It has been said that in order to prevent *total* cinematographic or television coverage and the resultant exploitation of the show, the organiser can bring an action for unjust enrichment.¹ The question is therefore to establish whether, having no other remedy available (Article 2042 of the Civil Code), he can have recourse to the action provided for in the first paragraph of Article 2041 of the Civil Code, which lays down that he who has enriched himself without just cause at the expense of another shall be required, to the extent of his enrichment, to indemnify the other for the *corresponding diminution in his fortune* (patrimony). In the case of film or TV coverage, such coverage, while it may enrich the producer, does not in any way diminish the net worth of the organiser, in that it in no wise adds to the cost of or otherwise affects the

organisation and the holding of the event. Nor is this the only unfulfilled requirement, because the action for unjust enrichment pre-supposes enrichment *without just cause*. Those who maintain that the action will lie agree that it does not survive when less than total coverage of the event is effected, so as to seek sanctuary in freedom of reporting, one of the "fair dealing" provisions. It is therefore necessary to inquire whether there is authority for this distinction, i.e. whether it is really a condition of reporting that the coverage should be only sporadic in nature. We shall accordingly examine this problem in all its aspects (see § 9).

8. With reference to the artisans of the entertainment it has also been asserted that some remuneration is due to them if they are professionals (unless they have expressly waived it), when their services—covenanted for solely as the subject-matter of the sports meeting—are used for motion pictures and television¹. In other words, the analogy with performing artists is not relied on here but the same conclusions are reached, somewhat as if Article 2579 were of universal application and not limited to rights ancillary to copyright. Without dwelling on the discrimination between amateurs and professionals, we must look for the answer to these questions to the broader problem, which we shall now discuss.

9. The present-day cult of sport—which takes us back to the national and social prestige of the Games, celebrated in Pindaric ode—has led, as readers are aware, to the formulation of a sports policy, with direct action and interference by the Government (and even a Minister specially assigned to that policy). The interest of the millions in sport has given rise to an imposing volume of reporting, which embraces and uses all the information media (specialised sporting papers, magazines, pages in the daily papers, the broadcast news and the cinema and television newsreels). We therefore come back to the rights of the press and the guarantee of the free exercise of those rights, which is based on the application of Article 21 of the Constitution and on free development, with all the facilities and indeed favours that are granted to the chroniclers of events of interest to the community at large, and which have spread from the printed Press to every form of journalistic activity. In such a situation free coverage for the purposes of reporting becomes a universal and absolute principle, before which even copyright has to give way. In the 1948 Brussels Conference to revise the Berne Convention an Article 10 *bis* was adopted which makes it a matter for national legislation to determine the conditions on which it shall be permissible to record, reproduce or communicate to the public brief excerpts of literary or artistic works on the occasion of reports on current events by means of photography, cinematography or radio-diffusion. In sporting events, where copyright is absent, there seems little chance, however, that the CONI and the sporting organisations can succeed in their claims. If anything the wind is blowing towards freedom of coverage and the duty to facilitate it, which means that the promoter of the event will not be able to stand in the way of the installation of apparatus for taking pictures, and at the most will be able to claim relief in respect of any expenses actually incurred. Under

¹ Cf. R. Borusso, *Novità in tema di riproduzione televisiva degli spettacoli sportivi*, in *Rivista di diritto sportivo*, 1955, pp. 139-143.

¹ Cf. R. Borusso, *Ancora in tema di riproduzione televisiva degli spettacoli sportivi*, in *Rivista di diritto sportivo*, 1955, pp. 14-21.

the influence of the standards laid down in Article 10 *bis* of the Berne Convention mentioned above, no stress is laid on the sporadic coverage of the event, but a distinction is made concerning filming or televising the complete meeting, it being considered that these overstep the limits of reporting, thereby removing the just cause which precludes an action for unjust enrichment. But this discrimination is an arbitrary one. While in the case of certain events the cinematographic or television report cannot be otherwise than sporadic, it cannot be denied that it embraces the entire event, and therefore it does not cease to qualify as reporting when it covers the entire meeting as being a single news episode.

This conclusion justifies us in denying that the artisans of the event, especially if they are professionals, are entitled to remuneration in respect of the motion-picture or TV use of their services whenever the latter has not been stipulated for in the agreed fee. Since their only action is against the promoter in his capacity as employer, it is he who is answerable for such remuneration, without prejudice to any remedies he may have against the motion-picture or television producers. Even this conclusion, which is based on an analogous interpretation of Article 2579 of the Civil Code, is without foundation, for if there can be no question of the film or TV producer owing a fee for the report, it follows that the artisans of the event themselves cannot claim a right to remuneration.

The foregoing conclusions are based on the law at present in force. We therefore cannot dismiss the possibility that *de jure condendo* preferential measures may be adopted, however much the readiness to do favours may be limited by the need for consistency in legislation and the practical possibilities¹.

10. The sporting event, like any other entertainment, would become a mere memory if it were not recorded by means of cinematography or television. The product of the recording is nothing more than a photographic documentary, not a cinematographic or television work. It follows that its author is entitled to the rights that a photographer would have, for the term of protection granted to the latter. The promoter of the event and the competitors therein do not acquire any rights in the documentary.

¹ The BBC recently announced (*The Times*, 28 August 1958) that it had signed an agreement with the Football League giving it for a three-year period the exclusive right to make filmed reports of Saturday matches. BBC-TV can film only three matches each Saturday, with a maximum length of ten minutes a game. This is a model of amicable agreement which eliminates the sporting organisations' anxiety about direct broadcasts reducing the number of spectators who would want to attend, especially as showing will not be simultaneous with the actual event itself.

It may be objected that it is rather queer that the photographer or producer who records the show should be protected, however little, provided of course he does not lapse into reporting, while no protection whatever is given to the organiser and the contestants in the sporting event. If no source of protection can be found in the law as it now stands, why cannot the problem at least be considered *de jure condendo*?

We must reject the idea that there can be any recourse whatever to the law of copyright, in view of the fact that there can be no talk of copyright without upsetting the whole system of protection for authors, nor can ancillary rights be invoked, because they could not be shown to be ancillary to any copyright.

It should further be borne in mind that *de jure condendo* the law-maker cannot legislate arbitrarily, and accordingly some basis must be found for the protection it is desired to grant.

One possible solution, which would only work when there is a "show" in premises closed off from the public, is to require a fee to be paid to the CONI by any person recording the event with a view to immediate and direct pecuniary gain, and hence excluding photographs and recordings made for reporting purposes, this fee to be a contribution to the advancement of sport. Even this arrangement—though it would enable the CONI to subsidise those concerned through contributions to the event—would still run counter to the fundamental principle that taxation must relate to the general activity of the State and must not be earmarked for special purposes, however many deviations or, better, bad examples to the contrary, may abound. In accordance with this principle all tribute must flow into the State's coffers, and the State can then use the funds available in the budget to subsidise particular activities in the interests of the community. However the question is considered and solved, there can be no question of its being bracketed with copyright or the rights ancillary to copyright.

11. When mature consideration is given to the problems set forth above it is rather difficult to understand why those connected with sport should have thought fit to look to copyright to obtain protection for their sporting events and their contestants. But copyright will not avail them in any event, either *de jure condito* or *de jure condendo*.

If, however, it should be considered necessary to adopt special legislation for the protection of sporting events, naturally within the limits of the practical possibilities of affording such protection, the problem must be considered entirely *de jure condendo*, and hence *ex novo*, with some invention that will reasonably take its place in the system of Italian law. That this is equitable no one will seriously deny.

Recent Contributions to the Doctrine of Ancillary Rights

by Dr. Bénigne Mentha

The *Internationale Gesellschaft für Urheberrecht E. V.* (*Intergu*), whose registered offices are in Berlin and whose administrative headquarters are at Hamburg, has made a speciality of discussing in its collection of monographs, of which some 15 have already appeared, the copyright problems of the hour which evoke the widest interest. Professor Troller set the ball rolling by querying whether the 1954 *Referentenentwurf*—the German committee proposals for a reform of the copyright law—was altogether in keeping with the requirements of the Berne Convention. His research revealed quite a number of divergencies which, coupled with the protests from the German authors, prompted the authorities to consider the Bill again with a view to overhauling it. (It has just come out in an amended form, this time as a Government Bill).

Other monographs of the Society are more of a documentary nature, such as that relating to the new French Act respecting literary and artistic property, published in 1956, when the Act was still in draft (though well-nigh final) form, and the volume devoted to the British Copyright Act, 1956, with an extensive introduction by Mr. S. J. Rubinstein, a London solicitor.

Rising above the national plane, Mr. Erich Schulze, the active director of the GEMA, the German society of authors and composers, turned his attention to the relations between performers and technology, a study which on account of its comprehensive character represented the introduction to a broad doctrinal debate on the rights that are sometimes called ancillary to copyright. This is a topic very much in the news, especially since the 1948 Brussels Literary and Artistic Conference raised it to the status of a formal proposal. For the *Intergu* this was a particularly promising covert to draw, and it loosed its keenest sleuth-hounds on the scent. Messrs. Alphonse Tournier and Robert Büchen considered some of the more specifically German aspects of the question, while Professor Philippe Möhring examined the problem from the international standpoint. The findings of this able jurist, at once a theoretician and a practician of the law, are somewhat severe; Mr. Möhring does not think that an international Convention on the Berne pattern is called for. He dismisses any analogy of substance between the creative activity of the author and the interpretative contribution of the performer, and *a fortiori* any analogy between the former and the handiwork of the record manufacturers and the broadcasters, a handiwork which he tends to assign to the industrial field. This is not the place to expatiate on this theme, one which is dear to the authors, as if their corporate prestige hung upon the banishment of performers from their midst. There are, to be sure, considerable differences between the original author and the artiste who merely renders the work of others, but the essential point is whether those differences must be taken as outweighing the resemblance based on the personal element which transpires in both the original

creation and in the interpretation. Discussion on this point can drag on *ad infinitum*, for the arguments in favour of each opinion tend to balance one another out, and in such a case people are liable to be guided by their sympathies.

The *Intergu* is naturally a stalwart supporter of the authors. In the eight contributions contained in the four volumes¹ I propose to review in this article it gives the rostrum to several specialists who continue to explore the matter. The crux of all the research and controversy is a clause in the German Copyright (Literary and Musical Works) Act (cited as LUG). Section 2 (2) of this Act states that —

“Where a literary or musical work is recorded by personal performance on contrivances for instruments serving to reproduce it mechanically for the ear, the contrivance thus made shall be considered equivalent to an adaptation of the work. The same rule shall apply where the recording is made by perforating, punching, arranging of pins or by similar activity, provided such activity is to be considered artistic. Under the first sentence, the performing artist, and under the second sentence, the person making the recording shall be considered the adapter.”

This provision, which was taken over with slight modifications into the Swiss Act of 1922 (Section 4, subsection 2), confers a derived right—any adapter or arranger being an author at second hand—on the performers and adapters who operate in the circumstances referred to therein. It can thus be said that the statute law of one of the principal countries producing literary and artistic works invests performers (musicians in general and also reciters and *raconteurs*) with a right that is not merely ancillary to copyright but identical with it. So far, everyone will agree. The trouble begins when one analyses the content of the protection thus given. The mechanical contrivance to which a literary or musical work is adapted is on all fours with an adaptation of that work, so the legislature has decided. Hence the author of the adaptation must have in his adaptation all the rights that an arranger possesses in his arrangement. And those rights consist of the totality of the prerogatives which the law allows to the author of a work, without prejudice to the rights of the author of the literary or musical work so adapted. In consequence, the author of an adaptation for mechanical instruments (meaning chiefly the performer) should, subject to the rights of the original author, enjoy in all cases the right to reproduce this adaptation and turn it to account by what are today the most lucrative processes, namely by public performance and broadcasting.

It is precisely this point which many German lawyers contest. They have no objection to the right of reproduction, but refuse to go any further: in their view the

¹ *Memoirs of the Internationale Gesellschaft für Urheberrecht*, published by Franz Vahlen G.m.b.h., Berlin-Lichterfelde and Frankfurt-am-Main.

performer is not invested with the right to license public performance of his rendering by means of the contrivance on which the latter is recorded (i.e. the record or tape). In so doing they attempt to place special and narrow limits on the right flowing from Section 2 (2) LUG. To this end the experts have given free rein to their ingenuity.

Professor Hubmann¹ considers that it could not have been the intention of the German Parliament, when enacting the above-mentioned provision, to put the performer on exactly the same footing as the author-arranger. The reference to the position of the latter points in a direction that should be followed with caution. If the prerogatives to be vested in performers had been examined in themselves, apart from any comparison—happy or otherwise—with copyright, they would have consisted in the right to record the performance on a mechanical contrivance and the right to press off or print off a number of copies of that contrivance for the purposes of sale. The arguments in favour of the limited assimilation of the performer to the author-arranger are, it must be confessed, somewhat cogent ones. The author in theory creates his work on his own, assuming all the risks that this implies, while the performer is as a rule engaged and paid for what he does. To give the latter a right in the secondary uses to which the result of his activity may lend itself (e.g. public performance by means of the mechanical contrivance) would create a precedent that outsteps the framework of our economy, in which the principle predominates that someone who is engaged for a given service exhausts his rights upon receipt of the consideration contracted for. The object embodying the service (of the employee or of the *entrepreneur*) belongs to the employer or master, and any subsequent purchaser of this object is authorised to use it as he pleases.

Mr. Neumann-Duesberg² for his part emphasises that Section 2 (2) LUG was designed to protect the record industry against unauthorised reproduction of its records and that the protection was vested (paradoxically) in the performer only to make more acceptable, in the context of copyright law, a provision which in reality was framed to safeguard industrial interests. And if that is so—as the committee work leading up to the Act suggests—there is no reason to give manufacturers of phonographic records a right in public performance that they did not even claim at the time. This conclusion coincides with that of Mr. Hubmann. Mr. Neumann-Duesberg then extends his reasoning to broadcasting rights, as is perfectly logical.

Professor Nipperdey³ contributes the following considerations. Section 2 (2) LUG makes the copyright subsist not in the rendering of the performing artist, but rather in the contrivance on which this rendering is recorded, namely the record (or nowadays the tape recording in many cases).

Now, such a contrivance may be reproduced in many copies for sale, whence the twin rights of reproduction and of offer for sale regarding which there is no dispute. On the other hand, a mechanical contrivance as such

can neither be performed nor broadcast; its only use is to perform or broadcast the works and the performances that are recorded on it. Accordingly, Section 2 (2) LUG can only grant protection that is compatible with the object to which it refers, and the grantee of such protection, whom the law likens to an author-arranger, will be protected only to a limited extent. As Nipperdey sees it, any provision dealing with performing or broadcasting rights in the German Act on literary and musical copyright is inapplicable to the performers and to the record industry because the law does not protect the performance as such.

In substantiation of this same contention Professor Liermann¹ advances yet another argument. In his opinion Section 2 (2) LUG should be regarded as a privilege (*jus singulare*) inuring to the performers and the record manufacturers. But this privilege is at variance with the modern tendencies in law, for nowadays the aim is to reduce to the minimum all exceptions to principles that are recognised as just for the purpose of regulating human coexistence. If a privilege is instituted, it must at any rate be founded on genuine grounds, i.e. grounds in conformity with the facts, be non-transferable in substance and respect vested interests. All these are conditions which are not fulfilled in Section 2 (2) LUG: for years now the record manufacturers have ceased to be beset by the business difficulties of an industry in its infancy; the performers are invested with the privilege only so that they can assign it to the manufacturers; and the position of the authors is affected by the performers' privilege, since the latter could only obtain their exceptional status at the expense of the former. It may be objected that what is done is done, and that the law is the law. Granted. It is not possible to refuse the performers and the manufacturers *de lege lata* what the German legislature was able and willing to grant them in 1910, the period when the *Novelle* (amending Act) containing the provision in Section 2 (2) was promulgated. On the other hand, one can avoid going any farther. Every privilege demands strict interpretation. *In casu*, Professor Liermann concludes, it is out of the question to give the performers and their assigns the right to use mechanical contrivances for the purpose of performing in public or broadcasting the works recorded on the said contrivances.

This same concern not to exceed the original *ratio legis* has prompted Professor Süss² in a dissertation in which he retraces the origin and evolution of mechanical rights with an able and informed pen. The concessions granted to the musical-box industry in the final protocol to the Berne Literary and Artistic Convention (original text of 1886) were later denied to the manufacturers of phonographic records by two rulings of the old *Reichsgericht* in 1888 and 1891, which are all the more noteworthy in that they are not much later than the original Berne Convention. This reasonably restrictive construction of the courts did not serve as an example to the legislature, which, as we have seen, granted a copyright in 1910 to the performer-cum-adapter, so that the record industry as assignee of that copyright could prevent the

¹ Professor Dr. Heinrich Hubmann: *Der Schutz des ausübenden Künstlers nach geltendem Recht*. (Volume 9 of the *Interju* series).

² Professor Dr. Horst Neumann-Duesberg: *Rechtsschutz der Leistung des ausübenden Künstlers*. (Volume 9).

³ Professor Dr. Dr. h.c. Hans Carl Nipperdey: *Der Leistungsschutz des ausübenden Künstlers*. (Volume 10).

¹ Professor Dr. Hans Liermann: *Die Stellung der §§ 2 Abs. 2, 22 und 22a. LUG im Rahmen der rechtsstaatlichen Ordnung*. (Volume 11).

² Professor Dr. Theodor Süss: *Das Recht der ausübenden Künstler, der Schallplattenhersteller und des Rundfunks*. (Volume 11).

unauthorised copying of the records it manufactured. Süss belabours the architects of this construction, and he is hardly any less severe about the record industry, which in 1910 was against the author of the work receiving any fee in the event of public performance of a record, and now is trying to collect a similar royalty for itself. With several other German legal writers on copyright, and with all the force of his convictions, Süss draws a distinction in kind between the "*Schöpfung*" (creation) of the author and the work or contribution of the performing artist. Even if the creation is insignificant, it still has in comparison with even the most remarkable interpretation that essential difference which should have prevented the assimilation unfortunately enshrined in Section 2 (2) LUG. Only the author in his capacity as a free and unsalaried creator retains sovereignty over his work after and in spite of publication, whereas even the most talented virtuoso must agree that the product of his work and talent belongs to the employer or master who commissioned him to perform. Our whole economic system would be upset if we yielded to the temptation to accord the privileges of authorship to persons to whom the creative function is denied. Professor Overath¹ points out that there is no such thing as a creative rendering or interpretation; the expression is a contradiction in terms. Hence the performing artist cannot claim an exclusive right embracing a whole group of prerogatives on the pattern of copyright. On the face of it, Section 2 (2) is already open to criticism, and any broader construction would make matters even worse.

Mr. Wawretzko² examines the position of the performers in the light of German labour law. He comes to the conclusion that in this direction there is every opportunity to safeguard the interests in question. Even the "*droit moral*" is amply safeguarded since the Karlsruhe Federal Court, as a matter of constitutional law, departed from the earlier precedents which denied the existence of a general right of personality, or as English law would say, of privacy. Mr. Wawretzko's remarks on this point are worthy of especial note. From now on one must reckon among the unlawful acts listed in Articles 823 and 847 of the German Civil Code invasions of the personal interests of a performer through an adulterated reproduction or a defective presentation of his performance. Similarly, unauthorised recording and broadcasting of a virtuoso's recital or playing imply a violation of the right of personality, since the performer is free to decide whether or not his services may be used otherwise than in the context in which he gives them. All in all, Mr. Wawretzko's study goes to show that performers in Germany are fairly widely and effectively protected on the financial and on the personal or moral plane. But a performer who has agreed to his performance being recorded on a disc or tape, and who has received his fee, has spent his right as an employee (or *entrepreneur*) remunerated for his services (or the making of a piece of work). The employer or master may thereupon dispose of the services (or piece of work) and is free to sell the record or tape. Could he license—and hence prohibit—its use in public? No. The employer (or the master), that is, the record or tape manufacturer, has

only acquired from the performer the permission to make a recording of the performance. This power implies the right to use the copies, and particularly to circulate them with a view to sale. But if an industrialist parts with an article he has produced to a purchaser, he ceases to have any rights over the product which is no longer in his possession and has become the property of another. In both cases, the purchaser must not be impeded in his enjoyment of the thing acquired (the services of the performer, or the contrivance manufactured by the record maker). The situation, as Mr. Wawretzko sees it, suggests the conclusions already reached by the other experts whose contributions have been mentioned above: no performing or broadcasting rights for the record manufacturers. To sum up, the German legal writers have come out very strongly in recent months in favour of a strict construction of Section 2 (2) LUG.

This attitude should not be taken lightly. Nevertheless the arguments on which it is founded, and which I have tried to summarise as objectively as possible, have all come from the authors' side; the lawyers of the *Intergu* have presented matters in their own light, and one could hardly expect them to do otherwise. Are there any spokesmen for the opposition? To my knowledge there is one, and an important one at that—no less a person than Professor Eugen Ulmer. This learned jurisconsult, who professes in intellectual rights at the University of Munich, has published a legal opinion in *Fono-Forum* (No. 3, 20 September 1956) which is sharply opposed to the seemingly prevailing opinion in Germany nowadays. Ulmer considers that a person whom the law deems to be an adapter and protects as such by copyright cannot but enjoy the various rights that accrue to an adapter. In support of this contention he cites the explanatory memorandum to the 1910 amending Act which was the origin of Section 2 (2) LUG; he also quotes the opinion of Allfeld, the eminent commentator of the German Act on literary and musical copyright. The former Reich Supreme Court (cf. judgment of 14 November 1936) allowed that Section 2 (2) LUG granted by way of assimilation full protection as for an author-arranger to the performer, with all the prerogatives that inure to the genuine arranger of a work. The performer and his assignee, the manufacturer of mechanical contrivances, therefore possess the right to perform in public and to broadcast the recording by means of the record or tape recording. A more recent judgment of the Karlsruhe Federal Court (6 November 1953) did not upset the precedent of 1936. Mr. Ulmer goes on to recall what happened in Great Britain, where a 1934 decision of the Chancery Division of the High Court of Justice expressly awarded the performing rights to the manufacturer, as the result of which the latter began to collect fees for the public uses of records, without prejudice to the royalties taken in by the authors' societies. In the above-mentioned issue of *Fono-Forum* Mr. Georg Roeber reaches the same conclusions as Mr. Ulmer, though he adopts a somewhat more roundabout line of reasoning.

The controversy thus opened oversteps the limits of any one branch of the law. We stand before one aspect of the controversy between the "school of concepts", on the one hand, which arrives at the consequences of the law by a process of deduction, and on the other hand the modern trend towards equity as the supreme and capital objective of the law. The chances are that neither of the two camps will be entirely beaten: each is the

¹ Professor Dr. Johannes Overath: *Urheber und Interpret in der Musik*. (Volume 11).

² Rechtsanwalt Herbert Wawretzko: *Leistungsschutz des ausübenden Künstlers in arbeitsrechtlicher Sicht*. (Volume 11).

repository of a part of the truth. No one would wish to incur the stigma of being heedless to the demands of equity, but one may well hesitate to remodel to the fashion of the moment legislative instruments that embody maturely framed intentions. In the case in hand, an argument of formal logic leads Professor Süss to observe that the object in which the copyright under Section 2 (2) LUG subsists, namely the record or tape recording, is *per se* capable of reproduction but not of performance. Fortified by this argument from the arsenal of concepts Mr. Süss pleads for a strict construction of the Act, while the former Reich Supreme Court and Professor Ulmer plump for the broad interpretation, embracing the two rights of reproduction and performance, and in so doing invoke another argument, to the effect that if Section 2 (2) LUG confers an adapter's copyright, the proprietor of this right must have all the prerogatives of an author-arranger. Once again we have a concept. The legal device on which protection of the performer (and his assignee) in Germany rests is nowadays the butt of universal criticism, but the principle will doubtless survive. The constantly improving quality of the phonograms themselves strengthens the performers' case; even in 1936 the former Reich Supreme Court noted that the services of performing artists did not necessarily rank lower in the scale of values than those of the creator who produces a work, a dictum that told in favour of the virtuoso performer, but also gave the authors an opportunity to retort that equality in value, which they did not deny in principle, would never remove the difference in kind between a work proceeding from the creative imagination of an author and a rendering by a performing artist, grafted as it is upon an existing work.

This opinion has wide acceptance, not to say universal approval. I will merely record it without pursuing it further. For to my mind there is a more important matter on which authors and performers meet on common ground, the fact that both are engaged in an activity in which they express their ego, both mind and soul. Their paths may differ, but they lead to the same thing—putting their personality over in their work as authors or performers. The moral right which the author invokes to enforce the inviolability of his work is one that the performer is every whit as much entitled to avail himself of to safeguard the purity of the performance in the recording. Here, then, is a perfect parallel, and to my mind it justifies the desire of the performers to be treated as authors. That Section 2 (2) LUG was a bungled piece of draftsmanship everyone would now agree; on the other hand, there is something to be said for giving the performer a copyright at one remove. I personally go further and consider it to be just.

Here, of course, we are evolving in the realm of theory: practical considerations may dictate some relaxations to the law-maker. The coexistence of author's and performer's rights in the same object (the mechanical contrivance) makes for complications, particularly when exclusive rights are involved. Moreover, it is fitting to take into account the circumstances in which the performer renders his services. As has been seen above, he records when commissioned to do so, whereas the author writes or composes of his own motion (in most cases at least). Having regard to these circumstances I could go along with a move to prune the normally exclusive performing and broadcasting rights that would accrue to

the performer as an author at second hand into the shape of a compulsory licence.

What about the tape and record manufacturer? one may ask. In his legal opinion in *Fono-Forum* Ulmer refers to a remark of the former Reich Supreme Court which declared in 1936 that it took much intellectual activity, artistic feeling and understanding, skill and hard work, not to mention the financial investment, to make a good record. Few would deny it. But it can fairly be said that a phonographic recording is not a work in which the personality of the author—in this case, that is, the record manufacturer—finds expression. The manufacturer does not project himself—with his his own unique individuality—into what he does, but merely endeavours to capture as best he can the work of another in an interpretation by a performer of merit. What is the highest praise for a record? It can be summed up in two words—high fidelity—which are a tribute to virtues of self-effacement and respect that are by no means required of the author of a personal rendering. Between the pursuits of the performer and those of the record manufacturer there is really that difference of kind which the “full-fledged” authors presume upon in their dealings with all the claimants to rights ancillary to copyright. Technical skill, however great, will never be a reflection of temperament.

In an extremely well-documented study Mr. Hirsch-Ballin¹, a professor at the Universities of Amsterdam and Leiden, is at pains to discover and state all reasons against vesting a quasi-copyright in the record manufacturers. He smartly demolishes the Monaco and Geneva draft international Conventions, the first framed by delegates of the Berne Union and UNESCO and the second by experts of the International Labour Organisation. It is not that Hirsch-Ballin denies to the record industry the protection that it may legitimately demand; he just thinks it pointless and indeed pernicious to enlist copyright to that end. While he is about it, he also refutes an article by Mr. W. Mak, a doctor of laws and the legal adviser to the Netherlands phonographic industry. The ambition of the record manufacturers to pass themselves off as creators—even at one remove—looks quite a problem to justify. Even the greatest professional qualifications will not do the trick. It is sometimes claimed that the phonographic recording process sometimes manages by remarkable subtleties of technique to outclass the live performance. If this assertion is true—which I have no means of knowing—it would still not be enough to hoist the manufacturer into the class of intellectual creators. The decisive element will never appear in the phonogram, and never in the merits or demerits of a record will one be able to discern the individuality of the manufacturer.

But if the manufacturer is thus stripped of an original right *ejusdem generis* with copyright, this does not mean that he is fated to remain empty-handed. I see him to be a producer of publications in sound, and as such he can become the assignee of the performing artist. This possibility would seem adequate, and it corresponds to the course open to the book publisher. True, the latter probably does not come up to his record-making colleague in terms of specialised success and endeavour; however,

¹ Professor Dr. Ernst D. Hirsch-Ballin: *Kommt Herstellern von Tonträgern ein quasi-Urheberrecht zu?* (Volume 12 of the *Intergu* series).

the difference between the two forms of publishing is not so great that it warrants kicking the record manufacturer upstairs, so to speak, into the category of performers invested with a quasi-copyright (or a copyright at second hand).

Matters must also be considered from a practical standpoint. If the phonogram bearing a recording of a copyright work were to be the vehicle for the rights not only of the author but also of the performer and the manufacturer, this would lead to an altogether preposterous system. It is already regrettable that as the result of a historical development that is now well established, the two copyrights authorising manufacture of the record and use thereof in public for the purpose of performing the work must be obtained from two different licensing bodies, the BIEM in respect of manufacture that implies reproduction of the work, and the musical "*petits droits*" society in respect of performance in public by means of the record. In the case of a fixation of a literary work in copyright, a special collection society may take the place of the performing right society. So much for the authors. Suppose for a moment that the performers get a performing right: the result will be an additional levy by a different body, parallel to that of the authors. Can one really argue that a third performing right, this time for the manufacturer of phonographic records, would be acceptable?

The publisher-assignee idea seems to me to be both simpler and fairer. The manufacturer will endeavour to put himself by contract into the legal position of the performer. In this way the idea behind (though not expressed in) Section 2 (2) LUG may be taken over without taking over in so many words a clumsy legal device. It is not necessary that the performer should be assimilated to an author *expressis verbis*. The manufacture and sale of the record lend themselves to agreements under the ordinary law, and there is no need to resort to special legislation. As for the performing right (which I should be inclined to reduce to the level of a compulsory licence, perhaps saving a moral right), it would be justified by the personal factor inherent in every worthwhile performance. This right of the performer should be given recognition in an *ad hoc* provision

in the Copyright Act, unless it is dealt with in a separate enactment. In this way the international Convention on ancillary rights would have an example to go by in the sphere of domestic law and a basis which it could broaden in the territorial sense. Since the latest talk is of devising a single international instrument instead of two texts proceeding from copyright and labour law respectively, this commendable return to legal restraint would be made all the more effective if the contents of the future Convention were themselves kept to the minimum.

On the morrow of the Brussels Literary and Artistic Conference of 1948 it was thought that the problem of ancillary rights would be solved in a relatively short time. This was a mistake. The late Professor de Boor was right in saying in *Droit d'auteur* in 1955: "I have a feeling that despite the existing national and international drafts we are even further from a final solution than is generally thought at the present time." The progressive opposition of the authors doubtless has something to do with this delay, unforeseen ten years ago. The works I have reviewed in this article show that in the German-speaking countries at least the discussion is far from dying down. New ideas might even be put forward. The leading Swiss expert on intellectual rights, Professor Alois Troller, has just published a masterly treatise in which he presents a case that is fairly favourable to the performers and will, unless I am greatly mistaken, influence the forthcoming deliberations¹. All these differing opinions and studies give one reasons to hope that in theory a doctrine will emerge and that in practice some legislative solution will be developed, the first bearing the seal of truth and the second that of efficiency with justice.

¹ I had no sooner written the above than I received a fascinating essay published as Volume 13 in the *Intergu* series. This is a paper which its author, Professor Troller, entitles *Jurisprudenz auf dem Holzwege* or "Justice on the wrong road" in which, referring to the tribulations of ancillary rights, he draws attention to the mistakes that have been made and shows how they could be put to rights. The author is severe but infallibly courteous. A model of intellectual probity coupled with the most urbane restraint of language.

News and Information

Germany (Federal Republic): New Draft Bills on Copyright

The Draft Bills relating to copyright which the Bonn Ministry of Justice published in 1954 (see *EBU Bulletin* No. 26, p. 474) aroused so much criticism on the part of the legal writers and the authors and their societies that the Ministry had no choice but to re-cast them and re-issue them in a modified form for public discussion. They have just come out, with a preface by the Minister of Justice, and all persons in any way concerned are invited to bring their views to the knowledge of the Ministry by 31st March 1960. It is probably the Ministry's intention to reconsider these new drafts in the light of any comments and criticisms before submitting them to the Government and thereafter, in the form of Government Bills, to Parliament. According to the Minister of Justice himself it seems likely that it will be another four years before Parliament finally passes the new legislation.

The new drafts differ appreciably from the 1954 versions on a number of points. It would, of course, be most desirable to make a detailed comparison of the old and new texts, this being the most dependable way of tracing the evolution in the thinking of German copyright circles. However, space will not permit of such a comparative study, and the most that can be done is to summarise those provisions in the recent draft Bills that have a bearing on broadcasting in one way or another.

The right to authorise broadcasting of the work would become one of the author's exclusive prerogatives, and would include the right to authorise or forbid communication of the work to the public by means of sound or visual broadcasting, transmission over a diffusion service, transmission of "still" pictures or other similar technical processes. It goes without saying that the author would also have the right to control performance of his work in public via a loud-speaker or a television screen. Certain restrictions would, however, be placed on the copyright, mainly in the interests of school broadcasting, reports on current events and to meet the specific requirements of broadcasting organisations. Schools, for instance, would be allowed to record broadcasts given as part of the programme of broadcasting to schools, and such recordings might be used for teaching purposes for one year. Works caused to be seen or heard in the course of current events could be transmitted by sound radio or televised in the context of news reports on such events and recorded for the same purpose. Broadcasting organisations could make sound and visual recordings with their own facilities of works they were authorised to broadcast, provided that such recordings could be used only for a single broadcast per transmitter or aerial direction within one month from the date of the first broadcast. On the expiry of this period these "ephemeral recordings" would have to be neutralised or effaced, except in the case of recordings of outstanding historical value, which might be laid up in official archives. Broadcasting organisations would also be able to broadcast a musical work with or without words without the author's permission if the latter had assigned away the exclusive broadcasting rights and if such rights had not yet reverted to the author, in which case equitable remuneration would have to be paid to the holder of the exclusive broadcasting rights. Whole dramatico-musical works and lengthy excerpts therefrom,

together with works under the control of a collecting society, would fall outside the scope of this statutory licence.

One rather striking innovation over the 1954 drafts consists in the introduction of a *domaine public payant*. Among other things, broadcasting of works that had fallen into the public domain would, under the new drafts, attract a payment of 10% of the fee for broadcasting a similar work that was still in copyright. These payments would go to a fund established under supervision of the Federal Ministry of the Interior and would be used to provide grants to talented authors or the dependants of deceased authors.

As in the previous drafts, the new Bills propose to bring under regulation, in addition to copyright proper, rights regarded as ancillary to copyright. Performing artists would be invested, vis-à-vis broadcasting, with the right to authorise the sound and visual fixation of their performances, as well as the right to authorise the copying of fixations thus made. In addition, the same performers would come in for the right to consent to the sound and visual broadcasting of their performances. On the other hand, sound and visual fixations that had been lawfully made could be broadcast without the performers' permission upon payment of equitable remuneration. In the case of performers under a contract of service to a broadcasting organisation, their right to remuneration in respect of the use of recordings made in the course of their contractual duties would be governed by the contract of employment. The performer would be in a position to transfer his rights of authorisation and rights to remuneration to another, but as regards the former he would retain the right, even after such transfer, to grant the necessary consent of his own accord. The rights thus conferred would expire 25 years after the recording of the performance.

Where the performance was a collective one, the rights of authorisation could be exercised exclusively either by the conductor of the choir or orchestra and the board of management of the formation, if such exists, or by the artistic director in the case of stage performances. In the case of performances given in theatres, halls, etc. the authorisation of the owner of the premises would also be required. The other rights, especially the right to remuneration, any right to damages for tort, etc., would also be exercised exclusively by the aforementioned persons unless all the members of the choir, orchestra or cast providing a stage performance had made them over to a collecting society for it to exercise them.

Each individual performer would have the right to restrain any mutilation of his performance liable to prejudice his professional reputation. In the case of collective performances each member of the formation would be under a duty to exercise this *droit moral* with proper regard for the interests of the other members of the group.

A point to be noted is that performers' rights would be hedged about with several restrictions contemplated in the field of copyright proper, notably through the institution of ephemeral recordings.

The manufacturers of sound recordings would be invested with the exclusive right of reproducing the records and putting them into circulation, a right that would expire 25 years after the date of recording and that would be surrounded by restrictions, including one permitting ephemeral recordings. With respect to phonographic records obtainable in the way of trade and embodying services rendered by performers, the manufacturer would have a claim against the performer for a fair share in any remuneration the latter was in a position to demand for the broadcasting and public performance of the phonogram.

Broadcasting organisations would be endowed with the exclusive right to authorise the rebroadcasting of their broadcasts, the recording or any other reproduction thereof (including stills) with a view to pecuniary gain and the communication of their television broadcasts to the public for profit. This right, subject to restrictions similar to those on copyright, would expire 25 years after the date of the broadcast. Failing any diplomatic or *de facto* reciprocity, the protection would accrue to the broadcasting organisations only in respect of broadcasts having their "origin" in the territory to which the law applies. Thus, in the absence of reciprocity, there would be no protection for programmes transmitted by broadcasting organisations with head offices in the Federal Republic of Germany if the origin of the programme was located abroad. One effect, among others, would be that Eurovision broadcasts relayed from abroad by one or other of the German television services would be left without protection, whereas those programmes are among the ones most needing protection.

In the motion picture field the Bill adopts a rather more conservative course than in the arrangements at first contemplated. The fiction of a copyright vesting in the film maker has gone, and in point of fact all that is left is presumptions of assignment to the film maker. In cases of doubt, permission to use an existing work for a film would import authorisation to make a film from the work, either adapted or unchanged, to print copies and make them available in the way of trade, to exhibit the film in public in the case of a cinematograph film proper or to show it on television in the case of a telefilm, and to exploit the film in foreign-language or otherwise modified versions. A second presumption, which relates to the possible joint authors of the cinematographic work itself, would mean in the event of doubt that voluntary participation in making a film implied assignment to the film maker of the right to exploit the cinematographic work in every known way.

As for the performers, the cinematographic work may be copied without their authorisation, and the showing of the film on television would not attract any fee for them.

The film maker himself, as the holder of a kind of ancillary right, would get the exclusive right to print off copies of his production, to release them and use them for public performances and television broadcasts. He could in addition restrain any mutilation of his film. His right would abate after the expiration of 25 years from the publication of the film or 25 years from the date on which it was made, if it had not been released to the public during that time. The film maker's ancillary right would subsist both in cinematographic works properly so called and in other motion picture productions.

The former draft Bill on collecting societies was conspicuous above all for the creation of a statutory monopoly in societies approved to carry on their operations, the effect of the monopoly being that only one society would have been authorised to function for each category of rights administered. The new draft drops the monopoly and with it the idea of a single society per category. The Ministry was inclined to think that the system provided for earlier might run counter to certain constitutional principles. Likewise abandoned is the limitative listing of rights which could only be exploited by a licensed society. The new draft extends the licensing system to any person or association of persons administering rights of authorisation and rights to remuneration for the account of several authors or owners of ancillary rights, but does not touch such administration when performed for the administrator's own account, even if he is the publisher of an extensive repertoire. It follows from this new approach that, for example, *grands droits* would remain outside the scope of the law on collecting societies so long as they were administered by a publisher, since such administration is conducted on his own behalf.

Foreign collecting societies having no offices in the territory of the Federal Republic of Germany would be permitted to carry on operations only if they had appointed a principal agent with full powers having his domicile or his residence within that territory.

Licensed collecting societies would be subject to a series of obligations, of which the most important is doubtless that of being compelled to contract on fair terms. Failing agreement, the rights applied for from the society would be deemed to have been granted if the applicant had tendered or paid into court the amount demanded by the society before using one or more of its works. *Vis-à-vis* the broadcasting organisations, licensed collecting societies would be required to enter into contracts on equitable terms for the rights they administer, but it is no longer stipulated that such contracts must be "blanket" contracts. The societies would be under the same obligation towards associations of persons or firms using works or performances protected under the law on copyright, and they would have to execute collective contracts for this purpose.

In the event of disagreement regarding a contract with a broadcasting authority or regarding a collective contract in the above sense, either party could refer the matter to a specially established arbitration tribunal. The tribunal would have power to determine the contents of disputed contracts and in particular to fix the amount of the fees and the method of payment. Its decisions would be binding if within one month of the tribunal handing down its award the matter was not referred to a court for decision. Such a decision would be within the competency of a Civil Chamber of the Federal Court.

Collecting societies would come under the control of a supervisory authority, which would be the Minister of the Interior.

Only when the new legislation has been passed will the Federal Republic of Germany feel able to ratify the Brussels version of the Berne Convention. In this connection the preliminary drafts of 1954 included a draft Ratification Bill which, as it was not combated, has not been reproduced with the new drafts. In his Preface, however, the Minister of Justice expressly refers to it as a Bill which has been maintained.

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appearing in Nos. 1 to 46 of the *E.B.U. Bulletin*, between May 1950 and December 1957.

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Administrative Office, 1, rue de Varembe, Geneva.

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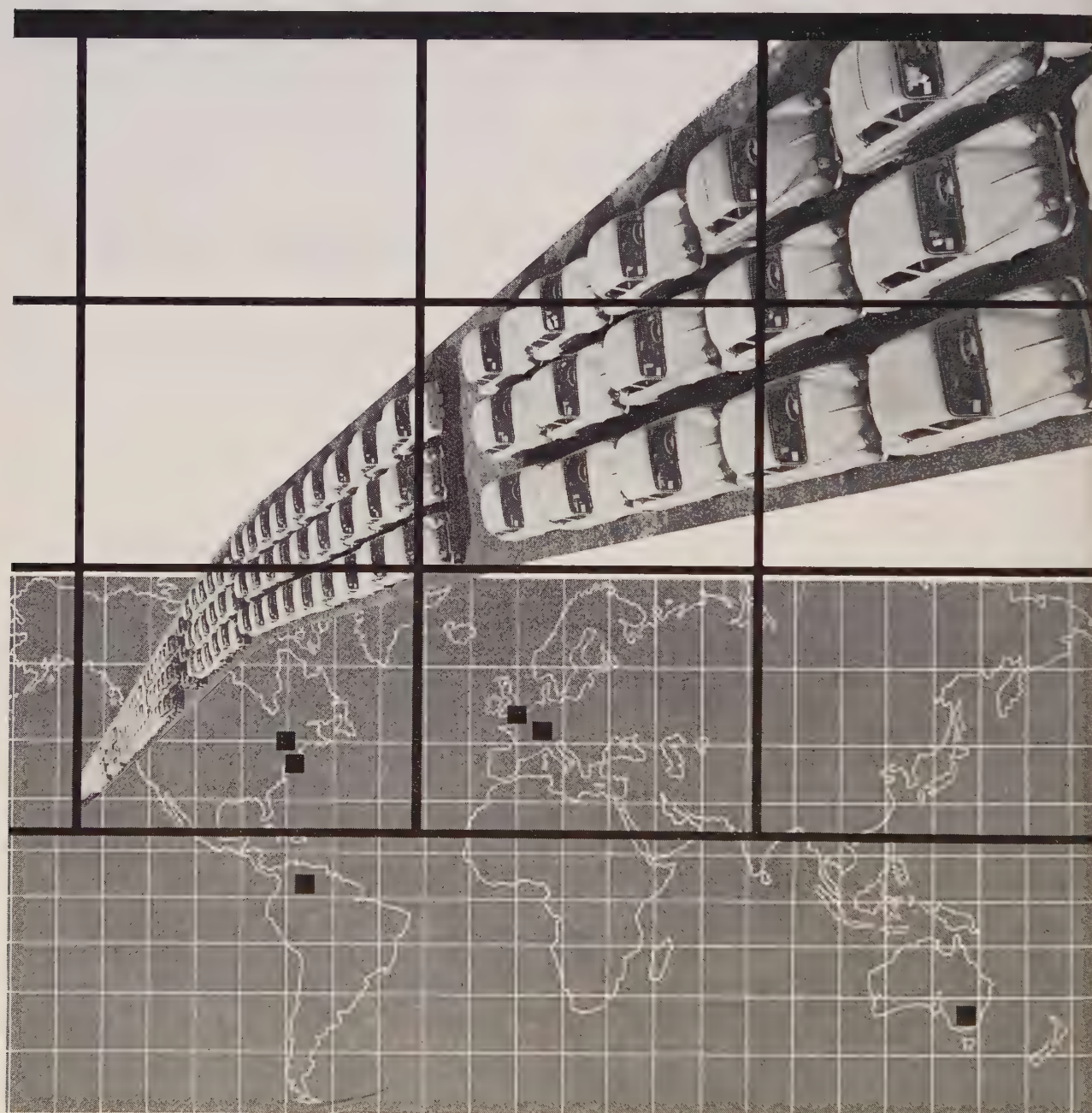
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Part B - General and Legal, published in January, March, May, July, September and November by the EBU Administrative Office, 1, rue de Varembe, Geneva, Switzerland.

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(CAHIER B — GÉNÉRAL ET JURIDIQUE)

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